

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 21st September, 1927, and is hereby promulgated for general information :—

## ACT NO. XXI OF 1927.

*An Act to amend the Indian Securities Act, 1920, for certain purposes.*

WHEREAS it is expedient to amend the Indian Securities Act, 1920, for certain purposes hereinafter appearing ; X of 1920.  
It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Securities (Amendment) Act, 1927.

Amendment of section 10, Act X of 1920.

2. (1) In sub-section (1) of section 10 of the Indian Securities Act, 1920 (hereinafter referred to as the said Act), after the word "lost" in both places where it occurs the word "stolen" shall be inserted, and after the word "loss" in both places where it occurs the word "theft" shall be inserted ; and in sub-section (2) of the same section after the word "loss" the word "theft" shall be inserted. X of 1920.

(2) To the same section after sub-section (2) the following sub-section shall be added, namely :—

"(4) If at any time before the Government becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled."

Insertion of new section 18A in Act X of 1920.

3. After section 18 of the said Act the following section shall be inserted, namely :—

Discharge in respect of interest.

"18A. Save as otherwise expressly provided in the terms of a Government security, no person shall be entitled to claim interest on any such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security."

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



# The Calcutta Gazette

THURSDAY, NOVEMBER 10, 1927.

## PART V.

*Acts of the Indian Legislature assented to by the Governor-General.*

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 21st September, 1927, and is hereby promulgated for general information :—

ACT No. XX OF 1927.

*An Act to amend the law relating to the fostering and development of the bamboo paper industry in British India.*

WHEREAS it is expedient to amend the law relating to the fostering and development of the bamboo paper industry in British India; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bamboo Paper Industry (Protection) Act, 1927.

Amendment of Act VIII of 1894.

2. (1) In the Second Schedule to the Indian Tariff Act, 1894, there shall be made the amendments specified in the Schedule to this Act. VIII of 1894.

(2) The amendments made by sub-section (1) shall have effect up to the 31st day of March, 1932.

Retrospective effect in certain cases.

3. Printing paper (excluding chrome, marble, flint, poster and stereo), containing no mechanical wood pulp, on which a duty has been paid at 15 per cent. *ad valorem* under item No. 99 of Schedule II to the Indian Tariff Act, 1894, between the 21st of September, 1925, and the commencement of this Act, shall be deemed to have been VIII of 1894.

liable to pay duty at one anna per pound under item No. 155 of that Schedule; and any deficiency between the duty which has been paid on such paper and the duty hereby made payable shall be deemed to be duty short-levied within the meaning of section 39 of the Sea Customs Act, 1878, and that Act shall apply accordingly.

VIII of  
1878.

Amendment of  
Act XXV of 1925.

4. The second item of the Schedule to the Bamboo Paper Industry (Protection) Act, 1925, is hereby repealed.

XXV of  
1925.

### THE SCHEDULE.

#### AMENDMENTS TO BE MADE IN SCHEDULE II TO THE INDIAN TARIFF ACT, 1894.

(See section 2.)

For items Nos. 155 and 156, the following shall be substituted, namely :—

|     |   |        |   |
|-----|---|--------|---|
| 155 | PRINTING PAPER (excluding chrome, marble, flint, poster and stencil, all sorts which contain no mechanical wood pulp or in which the mechanical wood pulp amounts to less than 65 per cent. of the fibre content ... .. | Pound. | One anna.   |
| 156 | WRITING PAPER—  |        |   |
|     | (a) Ruled or printed forms (including letter paper with printed headings) and account and manuscript books and the binding thereof ... ..   | Pound. | One anna or 15 per cent. <i>ad valorem</i> , whichever is higher. |
|     | (b) All other sorts ... ..  | ..     | One anna."  |

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 22nd September, 1927, and is hereby promulgated for general information:—

## ACT NO. XXVIII OF 1927.

*An Act further to amend the Indian Income-tax Act, 1922, for certain purposes.*

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title

1. This Act may be called the Indian Income-tax (Amendment) Act, 1927.

Amendment of section 59, Act XI of 1922.

2. (1) In section 59 of the Indian Income-tax Act, XI of 1922, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(a) prescribe methods by which an estimate of such income, profits and gains may be made, and

(b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax,

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.”

(2) Sub-sections (3) and (4) of the same section shall be re-numbered as sub-sections (4) and (5), respectively.

W. T. M. WRIGHT,

*Secretary to the Government of India (offg.).*



# The Calcutta Gazette

THURSDAY, NOVEMBER 17, 1927.

## PART V.

*Acts of the Indian Legislature assented to by the Governor-General.*

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 22nd September, 1927, and is hereby promulgated for general information :—

ACT NO. XXII OF 1927.

*An Act further to amend the Societies Registration Act, 1860, for certain purposes.*

WHEREAS it is expedient further to amend the Societies Registration Act, 1860, for certain purposes hereinafter appearing ; It is hereby enacted as follows :—

XXI of  
1860.

Short title.

1. This Act may be called the Societies Registration (Amendment) Act, 1927.

Amendment of  
section 20, Act  
XXI of 1860.

2. In the preamble to, and in section 20 of, the Societies Registration Act, 1860, after the words "the diffusion of useful knowledge" the words "the diffusion of political education" shall be inserted.

XXI of  
1860.

W. T. M. WRIGHT,

*Secretary to the Government of India (offg.).*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 22nd September, 1927, and is hereby promulgated for general information :—

## ACT NO. XXIII OF 1927.

*An Act further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India.*

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to protect the cotton textile industry in British India against competition in cotton yarn produced under industrial conditions which enable such yarn to be produced at a cost below that at which it can be produced in British India ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Tariff (Cotton Yarn Amendment) Act, 1927.

Amendment of the Second Schedule to Act VIII of 1894.

2. (1) In Item No. 44 of the Second Schedule to the Indian Tariff Act, 1894, after the figure and words " 5 per cent." the figure and words " or  $1\frac{1}{2}$  annas per pound, whichever is higher " shall be added.

(2) The amendment made by sub-section (1) shall have effect up to the 31st day of March, 1930.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 22nd September, 1927, and is hereby promulgated for general information:—

ACT No. XXIV OF 1927.

*An Act further to amend the Indian Tariff Act, 1894.*

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to remove or reduce the customs duties on certain machinery and materials of industries; VIII of 1894.  
It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Indian Tariff (Amendment) Act, 1927.

(2) It shall come into force on the 1st day of October, 1927.

Amendment of the Second Schedule, Act VIII of 1894.

2. In the second Schedule to the Indian Tariff Act, VIII of 1894, there shall be made the amendments specified in the Schedule to this Act.

## THE SCHEDULE.

(See section 2.)

1. In Item No. 1A, for the word and figures "No. 68" the words, letter and figures "Nos. 1B and 68" shall be substituted.

2. After Item No. 1A, the following item shall be inserted, namely:—

"1B | Sago flour."

3. After item No. 6, the following heading and item shall be inserted, namely:—

"TALLOW, STEARINE AND WAX.

6A | Tallow."

4. After Item No. 8, the following item shall be inserted under the heading "MISCELLANEOUS," namely:—

"8A | China Clay."

5. After Item No. 13, the following item shall be inserted, namely:—

"13A | Bleaching paste and bleaching powder."

6. After Item No. 14, the following item shall be inserted, namely:—

"14A | Magnesium chloride."

and Item No. 14A shall be re-numbered 14B.

7. After Item No. 14B, the following heading and item shall be inserted, namely:—

"DYES AND COLOURS.

14C | Dyes derived from coal-tar and coal-tar derivatives used in any dyeing process."

8. After Item No. 18, the following heading and items shall be inserted, namely :—

“ MACHINERY.

18A MACHINERY, namely, such of the following articles as are not otherwise specified :—

- (1) prime-movers, boilers, locomotive engines and tenders for the same, portable engines (including power-driven road rollers, fire engines and tractors), and other machines in which the prime-mover is not separable from the operative parts ;
- (2) machines and sets of machines to be worked by electric, steam, water, fire or other power, not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts ;
- (3) apparatus and appliances, not to be operated by manual or animal labour, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose ;
- (4) control gear, self-acting or otherwise, and transmission-gear designed for use with any machinery above specified including belting of all materials and driving chains, but excluding driving ropes not made of cotton ;
- (5) bare hard-drawn electrolytic copper wires and cables and other electrical wires and cables, insulated or not ; and poles, troughs, conduits and insulators designed as parts of a transmission system, and the fittings thereof.

NOTE.—The term ‘ industrial system ’ used in sub-clause (3) means an installation designed to be employed directly in the performance of any process or series of processes necessary for the manufacture, production or extraction of any commodity.

18B The following TEXTILE MACHINERY AND APPARATUS by whatever power operated, namely, healds, heald cords and heald knitting needles ; reeds and shuttles ; warp and weft preparation machinery and looms ; bobbins and pirns ; dobbies ; Jacquard machines ; Jacquard harness linen cords ; Jacquard cards ; punching plates for Jacquard cards ; warping mills ; multiple box sleys ; solid border sleys ; tape sleys ; swivel sleys ; tape looms ; wool carding machines ; wool spinning machines ; hosiery machinery ; coir mat shearing machines ; coir fibre willowing machines ; heald knitting machines ; dobby cards ; lattices and lags for dobbies ; wooden winders ; silk looms ; silk throwing and reeling machines ; cotton yarn reeling machines ; sizing machines ; doubling machines ; silk twisting machines ; cone winding machines ; piano card cutting machines ; harness building frames ; card lacing frames ; drawing and denting hooks ; sewing thread balls making machines ; cumbli finishing machinery ; hank boilers ; cotton carding and spinning machines ; mail eyes, lingoes, comber boards and comber board frames ; take-up motions ; temples and pickers ; picking bands ; picking sticks ; printing machines ; roller cloth ; clearer cloth ; sizing tunnel ; and roller skins.

18C PRINTING AND LITHOGRAPHIC MATERIAL, namely : presses, aluminium lithographic plates, composing sticks, chases, imposing tables, lithographic stones, stereo-blocks, wood blocks, half-tone blocks, electrotypes blocks, roller moulds, roller frames and stocks, roller composition standing screw and hot presses, perforating machines, gold blocking presses, galley presses, proof presses, arming presses, copper plate printing presses, rolling presses, ruling machines, ruling pen making machines, lead and rule cutters, type casting machines, type setting and casting machines, rule bending machines, rule mitreing machines, bronzing machines, stereotyping apparatus, paper folding machines, and paging machines, but excluding ink and paper.



- 18D | COMPONENT PARTS OF MACHINERY, as defined in Nos. 18A, 18B and 18C, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose :  
 Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable."

9. After Item No. 24, the following items shall be inserted, namely :—

- " 24A | Ropes, cotton.  
 24B | Starch and farina."

10. After Item No. 43, under the heading "YARNS AND TEXTILE FABRICS", the following item shall be inserted, namely :—

- " 43A | Artificial silk yarn and | *Ad valorem* | 7½ per cent."  
 thread.

11. In Part III of the Schedule, the heading "MACHINERY", and Items Nos. 51, 51A and 51B shall be omitted.

11A. For item No. 54 the following shall be substituted, namely :—

- 54 | The following printing material, namely, type, leads, brass rules, wooden and metal quoins, shooting sticks and galleys and metal furniture.

12. For the second proviso to Item No. 63, the following shall be substituted, namely :—

" Provided also that articles of machinery as defined in No. 18A or No. 18D shall not be deemed to be included hereunder."

13. In the proviso to item No. 64, for the figures and letter "51" and "51A" the figures and letters "18A" and "18D" shall be substituted, respectively.

14. In item No. 68, after the word "FLOUR", the words, "except sago flour" shall be inserted.

15. For item No. 77, the following shall be substituted, namely :—

- " 77 | All sorts of stearine, wax, grease and animal fat not otherwise specified."

16. In item No. 92, after the word "sorts" where it occurs for the first time, the words "not otherwise specified" shall be inserted.

17. In item No. 96, the brackets, words and figures "(see Nos. 15, 16, 18 and 51B)" shall be omitted.

18. In item No. 103, for the figures "51" the figures and letter "18A" shall be substituted.

19. In item No. 106, after the word "FIBRE" the words "not otherwise specified" shall be inserted.

20. In item No. 111, for the figures "51" the figures and letter "18A" shall be substituted.

21. Item No. 117 shall be omitted.

22. In item No. 149A, the words, figures and letter "see Nos. 51 and 51A" shall be omitted.

23. In item No. 153, for the figures and letter "51, 51A" the figures and letters "18A, 18D" shall be substituted.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.)

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 22nd September, 1927, and is hereby promulgated for general information :—

## ACT No. XXVII OF 1927.

*An Act to amend the Indian Emigration Act, 1922,  
for a certain purpose.*

WHEREAS it is expedient to amend the Indian Emigration Act, 1922, for the purpose hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Emigration (Amendment) Act, 1927.

Insertion of new clause in section 2, Act VII of 1922.

2. After clause (c) of sub-section (1) of section 2 of the Indian Emigration Act, 1922 (hereinafter referred to as the said Act), the following clause shall be inserted, namely :—

“(cc) ‘emigrant ship’ means any ship specially chartered for the conveyance of emigrants, or conveying emigrants exceeding a number to be prescribed :

Provided that the Governor General in Council may, by notification in the Gazette of India, declare that ships conveying emigrants to any specified port shall not be deemed to be emigrant ships.”

Amendment of section 24, Act VII of 1922.

3. (1) In clause (h) of sub-section (2) of section 24 of the said Act, for the words “any ship specially chartered for the transport of emigrants” the words “emigrant ships” shall be substituted.

(2) In clause (h) of the said sub-section, for the words “both up to the date of their actual departure from India,” the words “up to the date of departure from India, during a voyage on an emigrant ship,” shall be substituted.

W. T. M. WRIGHT,

*Secretary to the Government of India (offg.).*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 21st September, 1927, and is hereby promulgated for general information:—

## ACT No. XVII OF 1927.

*An Act to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India.*

WHEREAS it is expedient to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India; It is hereby enacted as follows:—

## PRELIMINARY.

Short title, extent  
and commencement.

1. (1) This Act may be called the Indian Lighthouse Act, 1927.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Customs-collector" means an officer of customs exercising the powers of a Customs-collector under the Sea Customs Act, 1878, and includes any person appointed by the Governor General in Council to discharge the functions of a Customs-collector under this Act; VIII of 1878.

(b) "district" means an area defined as a district for the purposes of this Act under section 3;

(c) "general lighthouse" means any lighthouse which the Governor General in Council may, by notification in the Gazette of India, declare to be a general lighthouse for the purposes of this Act;

(d) "lighthouse" includes any light-vessel, fog-signal, buoy, beacon, or any mark, sign or apparatus exhibited or used for the guidance of ships;

(e) "local lighthouse" means any lighthouse which is not a general lighthouse;

(f) "local lighthouse authority" means a Local Government, local authority or other person having the superintendence and management of a local lighthouse;

(g) "owner" includes any part-owner, charterer, or mortgagee in possession and any agent to whom a ship is consigned;

(h) "port" means any port, as defined in the Indian Ports Act, 1908, to which that Act extends; XV of 1908.  
and

(i) words and expressions used in this Act and not otherwise defined have the same meanings respectively as in the Indian Merchant Shipping Act, 1923. XXI of 1923



Appointment of  
officers.

3. The Governor General in Council may, by notification in the Gazette of India,—

- (a) define areas to be districts for the purposes of this Act;
- (b) appoint a person to be the Superintendent of Lighthouses in each district;
- (c) appoint a person to be the Chief Inspector of Lighthouses in British India; and
- (d) appoint persons to be Inspectors of Lighthouses.

Advisory  
Committees.

4. (1) The Governor General in Council shall appoint a Central Advisory Committee and shall consult it in regard to—

- (a) the erection or position of lighthouses or of any works appertaining thereto;
- (b) additions to, or the alteration or removal of, lighthouses;
- (c) the variation of the character of any lighthouse or of the mode of use thereof;
- (d) the cost of any proposals relating to lighthouses; or
- (e) the making or alteration of any rules or rates of dues under this Act.

(2) The Governor General in Council may, if he thinks fit, appoint an Advisory Committee for any district for the purpose of advising in regard to any of the matters specified in sub-section (1) in so far as the interests of the district are affected thereby.

(3) Advisory Committees shall consist of persons representing interests affected by this Act or having special knowledge of the subject-matter thereof.

#### GENERAL LIGHTHOUSES.

Management of  
general lighthouses  
by the Governor  
General in Council  
and delegation of  
management.

5. (1) The superintendence and management of all general lighthouses are vested in the Governor General in Council.

(2) The Governor General in Council may require any local lighthouse authority to undertake the superintendence and management of any general lighthouse situated in or adjacent to the local limits within which the authority exercises its powers, and shall pay to the authority such sums to defray the cost of superintendence and management as he may determine.

#### LOCAL LIGHTHOUSES.

Power to inspect  
local lighthouses.

6. (1) The Chief Inspector of Lighthouses may, at any time, and any Superintendent or Inspector of Lighthouses may, if authorised in this behalf by a general or special order in writing of the Governor General in Council, enter upon and inspect any local lighthouse and make such inquiries in respect thereof or of the management thereof as he thinks fit.

(2) Every person having the charge of, or concerned in the management of, any lighthouse shall be bound to furnish to any officer authorised by or under sub-section (1) to inspect the lighthouse all such information regarding the same as the officer may require.

(3) Every local lighthouse authority shall furnish to the Governor General in Council all such returns and other information in respect of the lighthouses under its supervision and management, or of any of them, as he may require.

Control of local  
lighthouses by the  
Governor General  
in Council.

7. (1) If, after an inspection under section 6 or such other inquiry as he thinks fit, the Governor General in Council is satisfied that a direction under this sub-section is necessary or expedient for the safety, or otherwise in the interests, of shipping, he may direct any local lighthouse authority—

(a) to remove or discontinue or to refrain from moving or discontinuing any lighthouse under its superintendence and management or to make or refrain from making any variation in the character or mode of use of any such lighthouse, or

(b) to erect, place or maintain, or to refrain from erecting, placing or maintaining, any lighthouse within the local limits within which the local lighthouse authority exercises its powers.

(2) A local lighthouse authority shall not erect, place, remove or discontinue any lighthouse or vary the character or mode of use of any lighthouse, unless it has given to the Governor General in Council at least one month's notice in writing of its intention so to do :

Provided that, in cases of emergency, a local lighthouse authority may take such action as it deems necessary and shall give immediate notice of the same to the Governor General in Council and, so far as is possible, to all shipping approaching or in the vicinity of the lighthouse.

(3) If a local lighthouse authority—

(a) fails to comply with any direction made under sub-section (1), or

(b) fails to exercise or perform, or exercises or performs in an improper, inefficient or unsuitable manner, any power or duty relating to the superintendence or management of lighthouses conferred or imposed upon it by or under any law for the time being in force or

(c) fails to make adequate financial provision for the performance of any such duty,

the Governor General in Council may, by order in writing, require the local lighthouse authority to comply with the direction, or to make arrangements to his satisfaction for the proper exercise of the power or performance of the duty, or to make financial provision to his satisfaction for the performance of the duty, as the case may be, within such period as he may specify.

(4) If the local lighthouse authority fails to comply with an order made under sub-section (3) within the specified period or within such further time as the Governor General in Council may allow, the Governor General in Council may exercise the power or perform the duty or make the requisite financial provision, as the case may be, and the local lighthouse authority shall be liable to repay the Governor General in Council any expenditure incurred by him in so doing.

Management of  
local lighthouses  
by the Governor  
General in Council.

8. The Governor General in Council may, at the request of a local lighthouse authority, undertake the superintendence and management of any local lighthouse on its behalf, and the local lighthouse authority shall pay to the Governor General in Council such sums to defray the cost of superintendence and management as may be agreed.

## LIGHT-DUES.

Levy and collection  
of light-dues.

9. For the purpose of providing or maintaining or of providing and maintaining lighthouses for the benefit of ships voyaging to or from British India or between ports in British India, the Governor General in Council shall, subject to the provisions of this Act, cause light-dues to be levied and collected in respect of every ship arriving at or departing from any port in British India.

Rates of light-dues  
leviable.

10. (1) The Governor General in Council may, by notification in the Gazette of India, prescribe rates, not exceeding two annas per ton, at which light-dues shall be payable, and may prescribe different rates for different classes of ships, or for ships of the same class when in use for different purposes or in different circumstances.

(2) Light-dues payable in respect of a ship shall be paid by the owner or master of the ship on its arrival at, and on its departure from, any port in British India :

Provided that, if light-dues have been paid in accordance with the provisions of this Act in respect of any ship, no further dues shall become payable in respect of that ship for a period of thirty days from the date on which the dues so paid became payable.

(3) An order under sub-section (1) imposing, abolishing or varying light-dues shall not take effect till the expiration of thirty days from the day on which the order was notified in the Gazette of India.

Receipts for light-  
dues.

11. Light-dues shall be paid to the Customs-collector who shall grant to the person paying the same a receipt in writing specifying—

- (a) the port at which the dues have been paid ;
- (b) the amount of the payment ;
- (c) the date on which the dues became payable ; and
- (d) the name, tonnage and other proper description of the ship in respect of which the payment is made.

Ascertainment of  
tonnage.

12. (1) For the purpose of the levy of light-dues, a ship's tonnage shall be reckoned as under the Merchant Shipping Acts for dues payable on a ship's tonnage, with the addition required under section 85 of the Merchant Shipping Act, 1894, with respect to deck cargo.

57 & 58  
Vict., c. 60.

(2) In order to ascertain the tonnage of any ship for the purpose of levying light-dues, the Customs-collector may—

- (a) if the ship is registered under any law for the time being in force in British India or under the law of any foreign country in respect of which an Order in Council has been made under section 84 of the Merchant Shipping Act, 1894, that ships of that country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers (any such ship being hereafter in this section referred to as a registered ship), require the owner or master or other person having possession of the ship's register or other papers denoting her tonnage to produce the same for inspection and, if such owner, master or other persons refuses or neglects to produce the register or papers, as the case may be, or otherwise to satisfy the Customs-collector as to the tonnage of the ship, cause the ship to be measured and the tonnage to be ascertained ; or

57 & 58  
Vict., c. 60.



(b) if the ship is not a registered ship and the owner or master fails to satisfy the Customs-collector as to the true tonnage thereof according to the mode of measurement prescribed by the law for the time being in force for regulating the measurement of registered ships, cause the ship to be measured and the tonnage thereof to be ascertained according to such mode.

(3) If any person refuses or neglects to produce any register or other papers or otherwise to satisfy the Customs-collector as to the true tonnage of any ship when required to do so under this section, such persons shall be liable to pay the expenses of the measurement of the ship and of the ascertainment of the tonnage, and, if the ship is a registered ship, shall further, on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in the port where the ship lies or in any port to which she may proceed be punishable with fine which may extend to one thousand rupees.

Recovery of light-dues, expenses and costs.

13. (1) If the owner or master of any ship refuses or neglects to pay to the Customs-collector on demand the amount of any light-dues or expenses payable under this Act in respect of the ship, the Customs-collector may seize the ship and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of the dues or expenses, together with the costs of the seizure and detention, is paid.

(2) If any part of such dues, expenses or costs remains unpaid after the expiry of five days following the date of the seizure, the Customs-collector may cause the ship or other thing seized to be sold, and with the proceeds of the sale may satisfy the dues, expenses or costs remaining unpaid, together with the costs of the sale, and shall repay the surplus, if any, to the person by whom the same were payable.

Refusal of port-clearance.

14. The officer whose duty it is to grant a port-clearance for any ship shall not grant the port-clearance until the amount of all light-dues, expenses and costs payable in respect of the ship under this Act and of any fines imposed thereunder has been paid, or until security for the payment thereof has been given to his satisfaction.

Determination of disputes as to liability for payment.

15. If any dispute arises as to whether light-dues, expenses or costs are payable in respect of any ship under this Act or as to the amount of such dues, expenses or costs, the dispute shall, on application made in this behalf by either of the disputing parties, be heard and determined by a Presidency Magistrate or Magistrate of the first class having jurisdiction at the place where the dispute arises, and the decision of such Magistrate shall be final.

Light-dues payable at one port recoverable at another.

16. (1) If the master of any ship in respect of which any light-dues are payable at any port causes the ship to leave such port without having paid the same, the Customs-collector at that port may by writing require the Customs-collector at any other port in British India to which the ship may proceed or in which she may be to recover the dues remaining unpaid.

(2) Any Customs-collector to whom such a requisition is directed shall proceed to levy such sum as if it were payable under this Act at the port at which he is the Customs-collector, and a certificate by the Customs-collector at the port at which the light-dues first became payable, stating the amount payable, shall be sufficient proof in any proceeding under section 13 or section 15 that such amount is payable.

Penalty for  
evading payment  
of light-dues.

**17.** (1) If the owner or master of a ship evades or attempts to evade the payment of any light-dues, expenses or costs payable in respect of the ship under this Act, he shall, on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in any port to which the vessel may proceed or in which she may be found, be punishable with fine which may extend to five times the amount of the sum payable.

(2) In any proceeding before a Magistrate in a prosecution under sub-section (1), any such certificate as is mentioned in sub-section (2) of section 16, stating that the owner or master has evaded such payment, shall be sufficient proof of the evasion, unless the owner or master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable grounds for such departure.

Exemption from  
payment of  
light-dues.

**18.** The following ships shall be exempted from the payment of light-dues under this Act, namely:—

- (a) any ship belonging to His Majesty or the Government or to a foreign Prince or State and not carrying cargo or passengers for freight or fares; and
- (b) any ship of a tonnage of less than fifty tons;

and the Governor General in Council may, by notification in the Gazette of India, exempt any other ships or classes of ships or ships performing specified voyages from such payment, either wholly or to such extent only as may be specified in the notification.

Refund of excess  
payments.

**19.** Where light-dues have been paid in respect of any ship in excess of the amount payable under this Act, no claim to refund of such excess payment shall be admissible, unless it is made within six months from the date of each payment.

#### ACCOUNTS.

Accounts, etc.

**20.** (1) The Governor General in Council shall cause to be maintained a separate account of all amounts received by way of light-dues, expenses, costs and fines under this Act and of all expenditure incurred for the purposes of this Act, and shall cause such account to be laid before the Central Advisory Committee, as soon as possible, after the close of each financial year.

(2) The Governor General in Council shall cause to be laid before the Central Advisory Committee before the close of each financial year a statement of the estimated receipts under, and expenditure for the purposes of, this Act during the forthcoming year.

#### RULES.

Power to make  
rules.

**21.** (1) The Governor General in Council may make rules consistent with this Act to carry into effect the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the powers and duties of the Chief Inspector of Lighthouses and of Superintendents and Inspectors of Lighthouses;
- (b) the procedure and conduct of business of Advisory Committees constituted under this Act;

(c) the rate of travelling and subsistence allowance payable to members of Advisory Committees; and

(d) the period in respect of which and the form in which the separate account referred to in sub-section (1) of section 20 shall be kept and the forms in which that account and the statement referred to in sub-section (2) of that section shall respectively be presented to the Central Advisory Committee.

#### REPEALS.

Repeals

**22.** The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

#### THE SCHEDULE.

(See section 22.)

#### ENACTMENTS REPEALED.

| Year. | No. | Short title.                       | Extent of repeal. |
|-------|-----|------------------------------------|-------------------|
| 1879  | IX  | The Burma Coast-lights Act, 1879.  | The whole.        |
| 1904  | IX  | The Madras Coast-lights Act, 1904. | Ditto.            |
| 1915  | II  | The Sind Coast-lights Act, 1915.   | Ditto.            |

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 21st September, 1927, and is hereby promulgated for general information:—

## ACT No. XVI OF 1927.

*An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.*

WHEREAS it is expedient to consolidate the law relating to forests the transit of forest-produce and the duty leviable on timber and other forest-produce; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Indian Forest Act, 1927.

(2) It extends to Bombay, Bengal, Bihar and Orissa, the United Provinces, the Punjab, the Central Provinces and the North-West Frontier Province (except the District of Hazara).

(3) The Local Government of any other province may, by notification in the local official Gazette, extend this Act to the whole or any specified part of the province.

Interpretation clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

(2) "Forest officer" means any person whom the Governor General in Council, or the Local Government or any officer empowered by the Governor General in Council or the Local Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;

(3) "forest-offence" means an offence punishable under this Act or under any rule made thereunder;

(4) "forest-produce" includes—

(a) the following whether found in, or brought from, a forest or not, that is to say:—

"timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds and myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say:—

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, or trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);

(5) "river" includes, any stream, canal, creek or other channels, natural or artificial;

(6) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and

(7) "tree" includes palms; bamboos, stumps, brush-wood and canes.

## CHAPTER II.

### OF RESERVED FORESTS.

Power to reserved forests.

3. The Local Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Local Government.

4. (1) Whenever it has been decided to constitute any land a reserved forest, the Local Government shall issue a notification in the local official Gazette—

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land, and

(c) appointing an officer (hereinafter called "the Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

*Explanation.*—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement Officer.

(3) Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act.

Bar of accrual of forest-rights.

5. After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the Local Government in this behalf.

Proclamation by  
Forest Settlement-  
officer.

6. When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as herein-after provided, will ensue on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

Inquiry by Forest  
Settlement-officer.

7. The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Powers of Forest  
Settlement-officer.

8. For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

Extinction of  
rights.

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

Treatment of  
claims relating  
to practice of  
shifting cultivation.

10. (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Local Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

- (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
- (b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.



(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the Local Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Local Government.

Power to acquire land over which right is claimed.

- 11. (1) In the case of a claim to a right in or over any land, other than a right-of-way or right of pasture, or a right to forest-produce or a water-course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—

- (i) exclude such land from the limits of the proposed forest; or
- (ii) come to an agreement with the owner thereof for the surrender of his rights; or
- (iii) proceed to acquire such land in the manner <sup>I of 1894.</sup> provided by the Land Acquisition Act, 1894.

(3) For the purpose of so acquiring such land—

- (a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894; <sup>I of 1894.</sup>
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of pasture or to forest-produce.

12. In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest Settlement-officer.

13. The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable,—

- (a) the name, father's name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

Record where he admits claim.

14. If the Forest Settlement officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest produce obtained by the exercise of the rights claimed may be sold or bartered.

Exercise of rights admitted.

15. (1) After making such record the Forest Settlement officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Forest Settlement-officer may—

- (a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or
- (b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or
- (c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the Local Government.

Commutation of rights.

16. In case the Forest Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the Local Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Appeal from order passed under section 11, section 12, section 15 or section 16.

17. Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the Local Government may, by notification in the local official Gazette, appoint to hear appeals from such orders.

Provided that the Local Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, and, when the Forest Court has been so established, all such appeals shall be presented to it.

Appeal under section 17.

18. (1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the Local Government, be final.

Pleadings.

19. The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

Notification declaring forest reserved.

**20.** (1) When the following events have occurred, namely :—

(a) the period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement-officer ;

(b) If any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court ; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government under section 16 of that Act, I of 1894.

the Local Government shall publish a notification in the local official Gazette, specifying definitely, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

Publication of translation notification in neighbourhood of forest.

**21.** The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

Power to revise arrangement made under section 15 or section 18.

**22.** The Local Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

No right acquired over reserved forest, except as here provided.

**23.** No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued.

Rights not to be alienated without sanction.

**24.** (1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Local Government :

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

Power to stop ways and water-courses in reserved forests.

**25.** The Forest-officer may, with the previous sanction of the Local Government or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

Acts prohibited in  
such forests.

**26. (1) Any person who—**

- (a) makes any fresh clearing prohibited by section 5, or
- (b) sets fire to a reserved forest or, in contravention of any rules made by the Local Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or who, in a reserved forest—
- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;
- (d) trespasses or pastures cattle, or permits cattle to trespass;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;
- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
- (h) clears or breaks up any land for cultivation or any other purpose;
- (i) in contravention of any rules made in this behalf by the Local Government hunts, shoots, fishes, poisons water or sets traps or snares; or
- (j) in any area in which the Elephants' Preservation Act, 1879, is not in force, kills or catches VI of 1879. elephants in contravention of any rules so made;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

**(2) Nothing in this section shall be deemed to prohibit—**

- (a) any act done by permission in writing of the Forest-officer, or under any rule made by the Local Government; or
- (b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of Government under section 23.
- (3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit.

Power to declare  
forest no longer  
reserved.

**27. (1) The Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.**

**(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.**



## CHAPTER III.

## OF VILLAGE-FORESTS.

Formation of  
village-forests.

**28.** (1) The Local Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The Local Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

## CHAPTER IV.

## OF PROTECTED FORESTS.

Protected  
forests.

**29.** (1) The Local Government may, by notification in the local official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the Local Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the Local Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Power to issue  
notification  
reserving trees,  
etc.

**30.** The Local Government may, by notification in the local official Gazette,—

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the Local Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

Publication of translation of such notification in neighbourhood.

**31.** The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Power to make rules for protected forests.

**32.** The Local Government may make rules to regulate the following matters, namely :—

- (a) The cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests ;
- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons ;
- (c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons ;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce ;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made ;
- (f) the examination of forest-produce passing out of such forests ;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests ;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 30 ;
- (i) the cutting of grass and pasturing of cattle in such forests ;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forests, and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879, is not in force ;
- (k) the protection and management of any portion of a forest closed under section 30 ; and
- (l) the exercise of rights referred to in section (29) .

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Penalties for acts in contravention of notification under section 30 or of rules under section 32.

**33.** (1) Any person who commits any of the following offences, namely :—

- (a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree ;
- (b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subject to any manufacturing process, or removes any forest-produce ;

- (c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest ;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest ;
- (e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion ;
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid ;
- (g) permits cattle to damage any such tree ;
- (h) infringes any rule made under section 32 ;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the Local Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Nothing in this Chapter to prohibit acts done in certain cases.

34. Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 32, or, except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

## CHAPTER V.

### OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forests for special purposes.

35. (1) The Local Government may, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation ;
- (b) the pasturing of cattle ; or
- (c) the firing or clearing of the vegetation ; when such regulation or prohibition appears necessary for any of the following purposes :—
  - (i, for protection against storms, winds, rolling stones, floods and avalanches ;
  - (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel ;
  - (iii) for the maintenance of a water-supply in springs, rivers and tanks ;
  - (iv) for the protection of roads, bridges, railways and other lines of communication ;
  - (v) for the preservation of the public health.

(2) The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(2) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the Local Government.

Power to assume management of forests.

36. (1) In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

Expropriation of forests in certain cases.

37. (1) In any case under this Chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.

1 of 1894.

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

Protection of forests at request of owners.

38. (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector, their desire—

- (a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

## CHAPTER VI.

### OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.

Power to impose duty on timber and other forest-produce.

39. (1) The Local Government may levy a duty in such manner, at such places and at such rates as it may declare by notification in the local official Gazette on all timber or other forest-produce—

- (a) which is produced in British India, and in respect of which the Government has any right;
- (b) which is brought from any place outside British India;



Provided that a notification directing the levy of a duty, in the case of timber and other forest-produce brought from any place outside British India which is not under the control of the Local Government, shall not be issued without the previous sanction of the Governor General in Council.

(2) In every case in which such duty is directed to be levied *ad valorem*, the Local Government may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest-produce which at the time when this Act comes into force in any territory are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

Limit not to apply to purchase-money or royalty.

40. Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

## CHAPTER VII.

### OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

Power to make rules to regulate transit of forest-produce.

41. (1) The control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within British India ;
- (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass ;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor ;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark ;
- (e) provide for the establishment and regulation of depôts to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it ; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depôts ;
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed ;

(g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same ;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks or the same, or the possession or carrying of marking hammers or other implements used for marking timber ;

(i) regulate the use of property marks for timber, and the registration of such marks ; prescribe the time for which such registration shall hold good ; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

Penalty for breach of rules made under section 41.

42. (1) The Local Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

Government and Forest-officers not liable for damage to forest-produce at depot.

43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act ; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

All persons bound to aid in case of accident at depot.

44. In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

## CHAPTER VIII.

### OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly

45. (1) All timber found adrift, beached, stranded or sunk ;

all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise ; and

in such areas as the Local Government directs, all unmarked wood and timber ; shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to any depot which the Forest-officer may notify as a depot for the reception of drift timber.

(3) The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section.

Notice to claimants of drift-timber.

46. Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber.

47. (1) When any such statement is presented as aforesaid, the Forest-officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

Disposal of unclaimed timber.

48. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him.

Government and its officers not liable for damage to such timber.

49. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

Payments to be made by claimant before timber is delivered to him.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

Power to make rules and prescribe penalties.

**51. (1)** The Local Government may make rules to regulate the following matters, namely :—

- (a) the salving, collection and disposal of all timber mentioned in section 45 ;
- (b) the use and registration of boats used in salving and collecting timber ;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber ; and
- (d) the use and registration of hammers and other instruments to be used for making such timber.

(2) The Local Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

## CHAPTER IX.

### PENALTIES AND PROCEDURE.

Seizure of property liable to confiscation.

**52. (1)** When there is reason to believe that a forest-offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Power to release property seized under section 52.

**53.** Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Procedure thereupon.

**54.** Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Forest-produce, tools, etc., when liable to confiscation.

**55. (1)** All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

**56.** When the trial of any forest-offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer, and, in any other case, may be disposed of in such manner as the Court may direct.



Procedure when offender not known or cannot be found.

**57.** When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same :

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

Procedure as to perishable property seized under section 52.

**58.** The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal from orders under section 55, section 56 or section 57.

**59.** The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 55, section 56, or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Property when to vest in Government.

**60.** When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

**61.** Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Punishment for wrongful seizure

**62.** Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.

**63.** Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

XLV of 1860

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest officer, or
- (c) alters, moves, destroys or defaces any boundary-mark of any forest or waste land to which the provisions of this Act are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest  
without warrant.

**64.** (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police-station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

Power to release on  
a bond a person  
arrested.

**65.** Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police-station.

Power to prevent  
commission of  
offence.

**66.** Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to try  
offences summarily.

**67.** The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the Local Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

V of 1898.

Power to  
compound  
offences.

**68.** (1) The Local Government may, by notification in the local official Gazette, empower a Forest-officer—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62, or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of subsection (1) shall in no case exceed the sum of fifty rupees.

Presumption that  
forest-produce  
belongs to  
Government.

**69.** When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

## CHAPTER X.

## CATTLE-TRESPASS.

Cattle-trespass  
Act, 1871, to  
apply.

**70.** Cattle trespassing in a reserved forest or in any portion of the protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer. 1 of 1871.

Power to  
alter fines  
fixed under  
that Act.

**71.** The Local Government may, by notification in the local official Gazette, direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871, there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding the following, that is to say :— 1 of 1871.

|  |     |     |              |
|--|-----|-----|--------------|
| For each elephant  | ... | ... | Ten rupees.  |
| For each buffalo or camel  | ... | ... | Two ..       |
| For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer | ... | ... | One rupee.   |
| For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid                          | ... | ... | Eight annas. |

## CHAPTER IX.

## OF FOREST-OFFICERS.

Local Government  
may invest Forest-  
officers with  
certain powers.

**72.** (1) The Local Government may invest any Forest-officer with all or any of the following powers, that is to say :—

- (a) power to enter upon any land and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898; and V of 1898.
- (d) power to hold an inquiry into forest-offences and, in the course of such inquiry to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest-officers  
deemed public  
servants.

**73.** All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code. XLV of 1860.

Indemnity for acts  
done in good  
faith.

**74.** No suit shall lie against any public servant for anything done by him in good faith under this Act.

Forest-officers  
not to trade.

**75.** Except with the permission in writing of the Local Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside British India.

## CHAPTER XII.

## SUBSIDIARY RULES.

Additional powers  
to make rules.

**76.** The Local Government may make rules :—

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

Penalties for breach of rules.

**77.** Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Rules when to have force of law.

**78.** All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

### CHAPTER XIII.

#### MISCELLANEOUS.

Persons bound to assist Forest-officers and Police-officers.

**79. (1)** Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall forthwith take steps, whether so required by any Forest-officer or Police-officer or not,—

(a) to extinguish any forest fire in such forest of which he has knowledge or information;

(b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,

and shall assist any Forest-officer or Police-officer demanding his aid—

(c) in preventing the commission in such forest of any forest-offence; and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

(a) to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information required by sub-section (1);

(b) to take steps as required by sub-section (1) to extinguish any forest fire in a reserved or protected forest;

(c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest, or

(d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest-offence, or when there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender;

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Management of forests the joint property of Government and other persons.

**80.** (1) If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may either—

- (a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same : or
- (b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the Local Government undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

Failure to perform service for which a share in produce of Government forest is enjoyed.

**81.** If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government that such service is no longer so performed :

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

Recovery of money due to Government.

**82.** All money payable to the Government under this Act or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

**83.** (1) When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce and such produce may be taken possession of by a Forest-officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to His Majesty.

Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.

**84.** Whenever it appears to the Local Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.



Recovery of penalties due under bond.

85. When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land-revenue. IX of 1872.

Repeals.

86. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

### THE SCHEDULE.

(See section 86.)

#### ENACTMENTS REPEALED.

| Year. | No.     | Short title.                             | Extent of repeal.  |
|-------|---------|--|--|
| 1     | 2       | 3  | 4  |
| 1878  | VII     | The Indian Forest Act, 1878              | So much as has not already been repealed.  |
| 1890  | V       | The Forest Act, 1890                     | Ditto.   |
| 1891  | XII     | The Amending Act, 1891.                  | So much of Part I of Schedule II as relates to the Indian Forest Act, 1878.  |
| 1901  | V       | The Indian Forest (Amendment) Act, 1901. | So much as has not already been repealed.  |
| 1911  | XV      | The Indian Forest (Amendment) Act, 1911. | Ditto.   |
| 1914  | X       | The Repealing and Amending Act, 1914.    | So much of the Second Schedule as relates to the Indian Forest Act, 1878, the Forest Act, 1890, and the Indian Forest (Amendment) Act, 1901. |
| 1918  | I       | The Indian Forest (Amendment) Act, 1918. | The whole.   |
| 1920  | XXXVIII | The Devolution Act, 1920.                | So much of Schedule I, Part I, as relates to the Indian Forest Act, 1878.  |

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 23rd September 1927, and is hereby promulgated for general information :—

## ACT No. XXXI OF 1927.

*An Act further to amend the Assam Labour and Emigration Act, 1901, for certain purposes.*

WHEREAS it is expedient further to amend the Assam Labour and Emigration Act, 1901, for certain purposes VI of 1901. hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Assam Labour and Emigration (Amendment) Act, 1927.

Amendment of section 116E, Act VI of 1901.

2. For sub-section (2) of section 116E of the Assam Labour and Emigration Act, 1901 (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely :—

“(2) Such cess shall be payable on every person deputed by an employer to engage or assist persons to emigrate and on every person assisted to emigrate to a labour district :

Provided that the rates at which the cess is levied shall not exceed the following rates, namely :—

Five rupees a year on each person so deputed ; and  
Five rupees on each person assisted to emigrate.”

Validation of recoveries prior to commencement of this Act.

3. Where any sum has been paid as cess under section 116E of the said Act before the commencement of this Act, notwithstanding that it was not so payable, and such sum would have been payable if this Act had been in force at the time of the payment, such sum shall be deemed to have been legally due as cess, and no claim shall lie in any Court for its refund.

W. T. M. WRIGHT,

*Secretary to the Government of India (offg.).*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 22nd September, 1927, and is hereby promulgated for general information :—

## ACT No. XXVI OF 1927.

*An Act further to amend the Cantonments Act, 1924,  
for certain purposes.*

WHEREAS it is expedient further to amend the Cantonments Act, 1924, for the purposes hereinafter II of 1924. appearing : It is hereby enacted as follows :—

Short title.

1. This Act may be called the Cantonments (Amendment) Act, 1927.

Amendment of section 4, Act II of 1924.

2. In sub-section (1) of section 4 of the Cantonments Act, 1924 (hereinafter referred to as the said Act), the word "immediate" shall be omitted. II of 1924.

Amendment of section 20, Act II of 1924.

3. To sub-section (1) of section 20 of the said Act the following proviso shall be added, namely :—

"Provided that when a military officer holding the office of President ceases to be the Officer Commanding the Station merely by reason of a temporary absence from the station on duty or on station leave, or during the transfer of his headquarters to a hill station, he shall not vacate the office of President."

Amendment of section 34, Act II of 1924.

4. For sub-section (1) of section 34 of the said Act, the following shall be substituted, namely :—

"(1) The Local Government may remove from a Board any member thereof who—

- (a) becomes subject to any of the disqualifications specified in sub-section (2) of section 27, or in sub-section (2) of section 28 ; or
- (b) has absented himself for more than three consecutive months from the meetings of the Board and is unable to explain such absence to the satisfaction of the Board ; or
- (c) has knowingly contravened the provisions of section 32 ; or
- (d) being a legal practitioner, acts or appears on behalf of any other person against the Board in any legal proceeding or against the Secretary of State in Council in any such proceeding relating to any matter in which the Board is or has been concerned, or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person."

Substitution of new section for section 35, Act II of 1924.

Consequences of removal.

5. For section 35 of the said Act, the following section shall be substituted, namely :—

- "35. (1) A member removed under clause (b) of sub-section (1) of section 34 shall, if otherwise qualified, be eligible for re-election or re-nomination.
- (2) A member removed under clause (c) or clause (d) of sub-section (1) of section 34 shall not be eligible for re-election or nomination for the period during which, but for such removal, he would have continued in office.

- (3) A member removed under sub-section (2) of section 34 shall not be eligible for re-election or nomination until the expiry of three years from the date of his removal."

Amendment of section 60, Act II of 1924.

6. To section 60 of the said Act the following proviso shall be added, namely :—

"Provided that, where the previous sanction of the Governor General in Council is required to the imposition of any tax in a municipality, such sanction shall also be required to its imposition in a cantonment."

Amendment of section 65, Act II of 1924.

7. In sub-section (1) of section 65, after the word "tax", where it appears for the second time, the word "assessed" shall be inserted.

Amendment of section 66, Act II of 1924.

8. In section 66, after the word "tax", the word "assessed" shall be inserted.

Amendment of section 75, Act II of 1924.

9. In section 75 of the said Act, for the words "the tax payable thereon" the words "any tax assessed on the annual value thereof" shall be substituted.

Amendment of section 76, Act II of 1924.

10. In section 76 of the said Act, for the words "the tax payable thereon" the words "any tax assessed on the annual value thereof and payable" shall be substituted.

Amendment of section 77, Act II of 1924.

11. In section 77 of the said Act,—

(a) for the words "the tax payable in respect of that year on the whole building", the words "any tax assessed on the annual value of the whole building and payable in respect of that year" shall be substituted; and

(b) in the proviso for the words "Provided that no such remission" the words "No remission or refund under section 75, section 76, or section 77" shall be substituted, and

the proviso, as so amended, shall be numbered as section 77A.

Amendment of section 107, Act II of 1924.

12. For sub-section (3) of section 10 of the said Act, the following shall be substituted, namely :—

"(3) A Cantonment Authority may, from time to time, with the previous sanction of the Local Government, invest any portion of its cantonment fund in securities of the Government of India or in such other securities, including fixed deposits in banks, as the Local Government may approve in this behalf, and may dispose of such investments or vary them for others of a like nature."

Amendment of section 283, Act II of 1924.

13. In clause (hh) of sub-section (2) of section 280 of the said Act, for the words "of taxes may be made in respect" the words "may be made of taxes assessed on the annual value" shall be substituted.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



# The Calcutta Gazette

THURSDAY, DECEMBER 1, 1927.

## PART V.

*Acts of the Indian Legislature assented to by the Governor-General.*

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 9th September, 1927, and is hereby promulgated for general information :—

ACT No. XIV OF 1927.

*An Act further to amend the Indian Merchant Shipping Act, 1923.*

WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923, for the purpose hereinafter appearing ; It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Indian Merchant Shipping (Amendment) Act, 1927.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Insertion of new sections 209B, 209C and 209D in Act XXI of 1923.

Notice of sailing of pilgrim ship.

2. After section 209A of the Indian Merchant Shipping Act, 1923 (hereinafter referred to as the said Act), the following sections shall be inserted, namely :—

“ 209B. (1) The master, owner or agent of any ship which is intended to sail on a voyage as a pilgrim ship from any port or place in British India shall, before advertising such ship for the conveyance of pilgrims or offering to convey any pilgrim by such ship or selling or permitting any person to sell a passage ticket to any pilgrim for conveyance by such ship, supply to the prescribed officer (hereinafter referred to as the Pilgrim Officer) at the port or place from which the ship is to commence



the voyage, and at each port or place in British India at which it is to touch for the purpose of embarking pilgrims, full particulars as to the class, tonnage and age of the ship, the maximum number of passage tickets of each class to be issued, the maximum price of each class of ticket, the date on which the ship is to sail from that port or place, the ports, if any, at which it is to touch, the place of its destination, and the probable date of its arrival thereat.

(2) The master, owner or agent shall supply to the Pilgrim Officer, within three days from the date of demand, such further information in regard to the matters mentioned in sub-section (1) as that officer may in writing demand from him.

(3) Within such time as may be prescribed before the date of the sailing of any such ship from any port or place in British India, the master, owner or agent of the ship shall advertise at such port or place in such manner as may be prescribed—

- (a) the place of destination of the ship,
- (b) the proposed date of sailing from that port or place which shall be the date communicated to the Pilgrim Officer under sub-section (1), and
- (c) the price of each class of passage tickets, which shall not be in excess of the price communicated to the Pilgrim Officer under sub-section (1).

(4) Any master, owner or agent who—

- (a) without reasonable cause, the burden of proving which shall lie upon him, fails or refuses to supply any particulars or information which he is by or under this section required to supply or supplies false particulars or information, or
- (b) advertises any ship for the conveyance of pilgrims, or offers to convey pilgrims by any ship, or sells or promises or permits any person to sell passage tickets to pilgrims for conveyance by any ship, without having first supplied the particulars required by sub-section (1) and in accordance with the provisions of that sub-section, or
- (c) advertises a date of sailing from any port or place other than the date communicated to the Pilgrim Officer at that port or place under sub-section (1), or advertises a price for passage tickets at that port or place in excess of the price so communicated, or
- (d) offers to convey pilgrims by any ship from any port or place in British India or sells or promises or permits any person to sell passage tickets to pilgrims for conveyance by a ship from any such port or place without having made advertisement, as required by sub-section (3), of the matters specified in that sub-section, or
- (e) sells or permits any persons to sell to any pilgrim any passage ticket at a price in excess of the price communicated to the Pilgrim Officer under sub-section (1),

shall be punishable with fine which may extend to two thousand rupees.

Compensation for delay in sailing.

209C. (1) If the pilgrim ship fails to proceed from any port or place on the date advertised under sub-section (3) of section 209B as the date of sailing therefrom, the

master, owner or agent shall become liable to pay as compensation to each pilgrim who has paid his passage money on or before such date the sum of one rupee for each completed day during which the sailing of the ship is delayed after that date :

Provided that such compensation shall not be payable in respect of any period during which the departure of the ship is impossible owing to any cause not arising from the act or default of the master, owner or agent, and the burden of proving such cause shall lie on such master, owner or agent :

Provided, further, that, where compensation has been paid or has become payable to any pilgrim in respect of delay in the sailing of the ship from any port or place and the sailing of the ship from any other port or place is thereafter delayed beyond the date advertised in that behalf, the pilgrim shall be entitled to compensation only in respect of any period by which the duration of such further delay exceeds the duration of the delay in respect of which he has already received or become entitled to compensation.

(2) In the event of such failure, the master, owner or agent shall be bound forthwith to inform the Pilgrim Officer at the port or place at which the delay occurs of the number of passage tickets of each class which have been issued for the voyage on or before the advertised date of sailing.

(3) Any sum payable as compensation under sub-section (1) shall be paid on behalf of the pilgrims entitled thereto to the Pilgrim Officer at the port or place at which the delay occurs on receipt by the master, owner or agent of a notice from that officer specifying the sum payable, and that officer shall, in such manner as may be prescribed, pay to each such pilgrim the compensation paid in respect of his detention :

Provided that, if an objection is made by the master, owner or agent that the sum specified in any such notice or any part of such sum is not payable by him, the sum paid or, as the case may be, the balance thereof remaining after payment to the pilgrims entitled thereto of compensation the right to which is not in dispute, shall be held in deposit until the objection has been decided :

Provided, further, that, if for any reason the compensation due to any pilgrim cannot be paid to him at the time of embarkation or at or before the time of his disembarkation at the port of his destination, the sum so remaining unpaid shall be made over to such authority administering any fund maintained for the assistance of pilgrims as the Local Government may, by general or special order, designate in this behalf.

(4) If the master, owner or agent objects that the sum specified in the notice issued under sub-section (3) or any part thereof is not payable by him, he may, at the time of payment of such sum, give to the Pilgrim Officer notice of his objection, together with a statement of the grounds thereof, and the Pilgrim Officer shall thereupon either cancel or modify the aforesaid notice in accordance with the objection and refund the sum held in deposit under sub-section (3), or refer the objection for decision to a Presidency Magistrate or a Magistrate of the first class exercising jurisdiction in the port or place at which the ship is delayed; the decision of the Magistrate on such reference shall be final, and there shall be refunded to the master, owner, or agent any amount allowed to him by such decision.

(5) On the failure of any pilgrim ship to proceed from any port or place on the date advertised under sub-section (3) of section 209B as the date of sailing therefrom, the Pilgrim Officer at that port or place shall forthwith give notice of such failure to the officer authorised to grant

port-clearance to ships thereat, and such officer shall refuse port-clearance to the pilgrim ship until the master, owner or agent produces to him a certificate of the Pilgrim Officer that all sums payable by way of compensation under this section up to the day on which the ship is to proceed have been paid.

Substitution of ships.

209D. Notwithstanding anything contained in section 209B or section 209C, where any ship which has been advertised under sub-section (2) of section 209B for the conveyance of pilgrims has been or is likely to be delayed beyond the advertised date of sailing, the owner or agent may, with the permission in writing of the Pilgrim Officer, substitute for it any other ship which is of the same class and is capable of carrying not less than the same number of pilgrims of each class, and on such permission being given the advertisement shall be deemed to have been made in respect of the ship so substituted, and all the provisions of those sections shall apply accordingly in respect of such ship."

Amendment of section 213, Act XXI of 1923.

3. In sub-section (1) of section 213 of the said Act after clause (qq) the following clause shall be inserted, namely :—

"(qqq) the manner in which the proposed date of sailing shall be advertised under section 209B; the appointment of Pilgrim Officers for the purposes of that section and sections 209C and 209D; the manner in which payment shall be made under section 209C to pilgrims and to the Pilgrim Officer; and the procedure to be followed by masters, owners or agents and by Pilgrim Officers and Magistrates in proceedings under that section;".

Repeals.

4. Sections 11, 12, 11A and 12B of the Protection of Pilgrims Act, 1887, and sections 11 and 12 of the Protection of Muhammadan Pilgrims Act, 1896, are hereby repealed.

Bom. Act II of 1887.  
Bom. Act I of 1896.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



# The Calcutta Gazette

THURSDAY, SEPTEMBER 23, 1927.

## PART VI.

*Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.*

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY.]

*A Bill to amend section 96 of the Code of Civil Procedure, 1908, for a certain purpose.*

WHEREAS it is expedient to amend section 96 of the Code of Civil Procedure, 1908, for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1927.

Amendment of section 96, Act V of 1908.

2. To section 96 of the Code of Civil Procedure, 1908, V of 1908, the following sub-section shall be added, namely:—

“(4) No appeal shall lie from the decision of any Court the pecuniary limits of whose jurisdiction exceed two thousand rupees, or of any other Court specially designated in this behalf by the Local Government, determining under section 47 an objection by a judgment-debtor to the execution of a decree for money on the ground that the decretal amount has been paid or adjusted in whole or in part, if the amount claimed to have been paid or adjusted does not exceed, in the case of such first-mentioned Court, five hundred rupees, or, in the case of such other Court, two hundred rupees.”

#### STATEMENT OF OBJECTS AND REASONS.

In paragraph 2 of Chapter 30 of their Report the Civil Justice Committee recommend *inter alia* that in cases where orders in execution of money decrees are passed under section 47 of the Code of Civil Procedure, 1908, on pleas by the judgment-debtor that payment or part payment had been made, there should be no appeal from such orders when passed by specially empowered munsifs or corresponding officers up to a limit of Rs. 200, and by Subordinate Judges or corresponding officers up to a limit of Rs. 500. The Bill seeks to give effect to this recommendation by an amendment of section 96 of the Code. As the Code, however, does not provide for the classification of subordinate Courts, a limit of Rs. 2,000 has been adopted to indicate the difference between the two classes of Courts with final jurisdiction.

A. P. MUDDIMAN.

The 10th March 1927.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[TO BE INTRODUCED IN THE LEGISLATIVE ASSEMBLY.]

## Appendix C.

*A Bill further to amend the Transfer of Property Act, 1882, for certain purposes.*

WHEREAS it is expedient further to amend the Transfer of Property Act, 1882, for the purposes hereinafter IV of 1882. appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Transfer of Property (Amendment) Act, 192 .

(2) It shall come into force on the first day of January 1929.

Amendment of section 1, Act IV of 1882.

2. In section 1 of the Transfer of Property Act, 1882 IV of 1882. (hereinafter referred to as the said Act), for the words and figures "paragraphs 2 and 3", in both places where they occur, the word and figure "paragraph 2" shall be substituted.

Amendment of section 2, Act IV of 1882.

3. In section 2 of the said Act, the word "Hindu" and the words "or Buddhist" shall be omitted.

Amendment of section 3, Act IV of 1882.

4. In section 3 of the said Act, for the last paragraph, containing the definition of "notice", the following shall be substituted, namely:—

"a person is said to have 'notice' of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it."

*Explanation I.*—Where any transaction relating to immoveable property has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration.

*Explanation II.*—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

*Explanation III.*—A person shall be deemed to have had notice of any fact if his agent acting in the course of the business transacted on his behalf has notice of that fact within the meaning of this provision."

Amendment of section 4, Act IV of 1882.

5. In section 4 of the said Act, for the words and figures "paragraphs 2 and 3" the word and figure "paragraph 2" shall be substituted, and for the figures "1877" the figures "1908" shall be substituted.

Amendment of section 6, Act IV of 1882.

6. In section 6 of the said Act, after clause (d) the following clause shall be inserted, namely:—

"(dd) A right to future maintenance in whatsoever manner arising or secured or determined cannot be transferred".



Amendment  
section 11, Act IV  
of 1882.

7. For the second paragraph of section 11 of the said Act beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely :—

"Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

Amendment  
section 15, Act IV  
of 1882.

8. In section 15 of the said Act, for the words "as regards the whole class" the following words shall be substituted, namely :—

"in regard to those persons only and not in regard to the whole class".

Substitution of new  
sections for sections  
16, 17 and 18, Act  
IV of 1882.

9. For sections 16, 17 and 18 of the said Act, the following sections shall be substituted, namely :—

Transfer to take  
effect on failure of  
prior interest.

"16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Direction for  
accumulation.

17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and income thereof shall be disposed of as if the period during which the accumulation has been directed to be made has elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred ;

and such direction may be made accordingly.

Transfer in per-  
petuity for benefit  
of public.

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind."

Amendment of  
section 39, Act IV  
of 1882.

10. In section 39 of the said Act,

- (a) the words "with the intention of defeating such right" shall be omitted, and for the words "of such intention" the word "thereof" shall be substituted; and
- (b) in the *Illustration* the words "in good faith," shall be omitted.

Amendment of  
section 40, Act IV  
of 1882.

11. In section 40 of the said Act, for the words "of the the latter property or to compel its enjoyment in a particular manner," the words "in a particular manner of the latter property," shall be substituted.

Amendment of  
section 43, Act IV  
of 1882.

12. In section 43 of the said Act,—

- (a) after the word "person" the words "fraudulently or" shall be inserted, and
- (b) after the words "the contract of transfer subsists," the following paragraph shall be inserted, namely:—

"When a suit is brought by the transferee to enforce his right under the transfer, the transferee shall not be entitled to claim any interest which the transferor may acquire in such property subsequent to the passing of a decree in such suit, from which no appeal lies, and not thereafter".

Amendment of  
section 52, Act IV  
of 1882.

13. (1) In section 52 of the said Act,—

- (a) for the words "active prosecution" the word "pendency" shall be substituted;
- (b) for the words "a contentious" the word "any" shall be substituted; and
- (c) after the words "suit or proceeding" where they occur for the first time, the words "which is not collusive and" shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely:—

"*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been finally disposed of by a decree or order from which no appeal lies, and final satisfaction of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period prescribed for the execution thereof by any law for the time being in force."

Substitution of  
new section for  
section 53, Act IV  
of 1882.  
Fraudulent trans-  
fer.

14. For section 53 of the said Act the following section shall be substituted, namely:—

"53. (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made gratuitously with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section no transfer gratuitously made shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

Insertion of new section 53A in Act IV of 1882.

Part performance.

15. After section 53 of the said Act the following section shall be inserted, namely :—

"53A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract though required to be registered has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right arising out of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof "

Amendment of section 54, Act IV of 1882.

16. In section 54 of the said Act,—

(a) the word "tangible," wherever it occurs, shall be omitted ;

(b) for the words "of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing," the words "or of any interest therein" shall be substituted ; and

(c) the words "In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property" shall be omitted.

Amendment of section 55, Act IV of 1882.

17. In section 55 of the said Act,—

(a) in sub-clause (a) of clause (1) after the word "property" the words "or in the seller's title thereto" shall be inserted ;

(b) in sub-clause (b) of clause (4), after the word "buyer", where it occurs for the second time, the words "or any person claiming under him with notice of the sale" shall be inserted ; and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added ; and

(c) in sub-clause (b) of clause (6) the words "with notice of the payment" shall be omitted.

Substitution of new section for section 56, Act IV of 1882

Marshalling by subsequent purchaser.

Amendment of section 58, Act IV of 1882.

Amendment of section 59, Act IV of 1882.

Insertion of new section 59A in Act IV of 1882. References to mortgagors and mortgagees to include persons deriving title from them.

Amendment of section 60, Act IV of 1882.

18. For section 56 of the said Act the following section shall be substituted, namely :—

“56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.”

19. In section 58 of the said Act,—

(a) in clause (a), the words and brackets “(if any)” shall be omitted ;

(b) to clause (c) the following proviso shall be added, namely :—

“Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.”;

(c) in clause (d)—

(i) after the words “Where the mortgagor delivers possession,” the words “or expressly or by implication binds himself to deliver possession” shall be inserted ; and

(ii) for the words “and to appropriate them”, the words “or any part of such rents and profits and to appropriate the same” shall be substituted ; and

(d) after clause (e) the following clause shall be added, namely :—

“(f) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage within the meaning of this section, is called an anomalous mortgage.”

20. In section 59 of the said Act,—

(a) the words “Where the principal money secured is one hundred rupees or upwards,” and

(b) the second paragraph beginning with the words “Where the principal money” and ending with the words “by delivery of the property,”

shall be omitted.

21. After section 59 of the said Act the following section shall be inserted, namely :—

“59A. Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.”

22. In section 60 of the said Act,—

(a) for the word “payable” the word “due” shall be substituted ;

(b) for the words “the mortgage-deed, if any, to the mortgagor” the following words shall be substituted, namely :—

“to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee”.

(c) the words and brackets "(where the mortgage has been effected by a registered instrument)" shall be omitted; and

(d) after the words "remaining due on the mortgage, except", the word "only" shall be inserted.

Substitution of new section for section 61, Act IV of 1882.

23. For section 61 of the said Act and the illustration thereto, the following section shall be substituted, namely:—

Right to redeem separately or simultaneously.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Amendment of section 62, Act IV of 1882.

24. In section 62 of the said Act,—

(a) after the words "In the case of", for the article "a" the article "an" shall be substituted; and

(b) in clause (b)—

(i) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage-money," shall be substituted; and

(ii) for the words "the principal money," where they occur for the second time, the words "the balance of the mortgage-money" shall be substituted.

Amendment of section 63, Act IV of 1882.

25. In section 63 of the said Act, for the words "at the same rate of interest" the words "at the rate of the rate of interest payable on the principal, and, where no such rate is fixed in the mortgage deed, at the rate of nine per cent. per annum" shall be substituted.

Insertion of new section 63A in Act IV of 1882.

26. After section 63 of the said Act the following section shall be inserted, namely:—

Improvements to mortgaged property.

"63A. (1) Where the mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money at the rate of interest payable on the principal, and where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor."



Amendment of  
section 64, Act IV  
of 1882.

27. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment of  
section 65, Act IV  
of 1882.

28. In section 65 of the said Act,—

- (a) in clause (d) the words "for a term of years" shall be omitted; and
- (b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

Insertion of new  
section 65A in  
Act IV of 1882.

29. After section 65 of the said Act the following section shall be inserted, namely:—

Mortgagor's power  
to lease.

- "65. (1) Subject to the provisions of sub-section (2), a mortgagor, while in possession of the mortgaged property, shall have power to make leases thereof, which shall be binding on the mortgagee.
- (2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom and usage.
- (b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.
- (c) No such lease shall contain a covenant for renewal.
- (d) Every such lease shall take effect from a date not later than six months from the date on which it is made.
- (e) In the case of a lease of agricultural land such lease shall not be on terms more favourable to the lessee than those of a lease from year to year as set out in section 106.
- (f) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.
- (g) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

Amendment of  
section 67, Act IV  
of 1882.

30. In section 67 of the said Act,—

- (a) for the word "payable" the word "due" shall be substituted; and
- (b) for clause (a) the following clause shall be substituted, namely:—
  - "(a) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or"

Insertion of new  
section 67A in Act  
IV of 1882.

Mortgagee when  
bound to bring one  
suit on several  
mortgages.

**31.** After section 67 of the said Act the following section shall be inserted, namely:—

“67A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of order under section 67, and who sues to obtain such order on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.”

Substitution of new  
section for section  
68, Act IV of 1882.  
Right to sue mort-  
gage-money.

**32.** For section 68 of the said Act the following section shall be substituted, namely:—

“68. (1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely:—

(a) where the mortgagor binds himself to repay the same;

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful acts or default of the mortgagor;

(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the suit and all proceedings therein shall be stayed, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property, or what remains of it, unless the mortgagee elects to abandon his security and the mortgage is extinguished by a registered instrument.”

Amendment of  
section 69, Act IV  
of 1882.

**33.** In section 69 of the said Act,—

(a) the first paragraph beginning with the words “A power conferred by the mortgage-deed” and ending with the words “specify in this behalf” shall be numbered as sub-section (1).

(b) in the sub-section so numbered,—

(i) for the words “A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases and in no others, namely:—”

the following words shall be substituted, namely:—

Notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866, a mortgagee, or any person acting on his behalf, shall, subject

Sale without  
intervention of  
Court.

XXXVIII  
of 1866

to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely :—

- (ii) in clauses (b) and (c), after the word "where" where it occurs, the words "a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and" shall be inserted; and
- (iii) in clause (c), for the word "is" the words "was, on the date of the execution of the mortgage-deed," shall be substituted and after the words "any other town" the words "or area" shall be inserted.
- (c) the word 'But' in the beginning of the second paragraph shall be omitted, and the said paragraph ending with the words "after becoming due" shall be numbered as sub-section (2), and clauses (1) and (2) of the said paragraph shall be lettered as (a) and (b), respectively;
- (d) the third paragraph beginning with the words "When a sale has been made" and ending with the words "exercising the power" shall be numbered as sub-section (3);
- (e) the fourth paragraph beginning with the words "The money which is received" and ending with the words "of the sale thereof" shall be numbered as sub-section (4);
- (f) for the fifth paragraph beginning with the words "Nothing in the former part" and ending with the words "comes into force" the following paragraph shall be substituted and shall be numbered as sub-section (5), namely :—  
 "(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882"; and
- (g) the last paragraph beginning with the words "The powers and provisions" and ending with the words "local official Gazette" shall be omitted.

Insertion of new section 69A in Act IV of 1882.

Appointment of receiver.

34. After section 69 of the said Act the following section shall be inserted, namely :—

"69A. (1) Where a mortgagee has a power of sale under sub-section (1) of section 69, and the right to exercise that power has arisen under sub-section (2) of that section, and in no other case, the mortgagee shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver, may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees. Failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this subsection.

- (3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides.
- (4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.
- (5) A person paying money to the receiver shall not be concerned to enquire if the appointment of the receiver was valid or not.
- (6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent. on the gross amount of all money received as is specified in his appointment, and if no rate is so specified, then at the rate of five per cent. on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.
- (7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.
- (8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:—
- (i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;
  - (ii) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;
  - (iii) in payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
  - (iv) in payment of the interest falling due under the mortgage;

(v) in or towards discharge of the principal money, if so directed in writing by the mortgagee; and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(10) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof attended by, such of the persons interested in the application as the Court may think fit.

The costs of every application under this sub-section shall be in the discretion of the Court.

(11) In this section "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage."

Amendment of section 71, Act IV of 1882.

35. In section 71 of the said Act, the words "for a term of years" shall be omitted.

Amendment of section 72, Act IV of 1882.

36. In section 72 of the said Act,—

(i) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted;

(ii) clause (a) shall be omitted;

(iii) in clause (b) for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;

(iv) after the words "where no such rate is fixed" the words "in the mortgage deed" shall be inserted;

(v) after the words "nine per cent. per annum." the following proviso shall be inserted namely:—

"Provided that the expenditure of money by the mortgagee under clauses (b) and (c) shall not be deemed to be necessary unless the mortgagor has failed to take proper and timely steps to preserve the property or to support the title."; and

(vi) for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate," the following shall be substituted, namely:—

"added to the principal money at the rate of interest payable on the principal money or, where no such rate is fixed in the mortgage deed, at the rate of nine per cent. per annum."



Substitution of new section for section 73, Act IV of 1882.

Right to proceeds of revenue sale or compensation on acquisition.

**37.** For section 73 of the said Act the following section shall be substituted, namely :—

“73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage is not due.”

Omission of sections 74 and 75, Act IV of 1882.

**38.** Section 74 and section 75 of the said Act shall be omitted.

Amendment of section 76, Act IV of 1882.

**39.** In section 76 of the said Act,—

(a) in clause (c) after the words “charges of a public nature” the words “and all rent” shall be inserted;

(b) in clause (h) after the words “deducting the expenses” the words “properly incurred for the management of the property and the collection of rents and profits and the other expenses” shall be inserted; and the words “on the mortgage money” shall be omitted; and

(c) in clause (i) the word “gross” shall be omitted, and after the words “as the case may be” the following shall be inserted, namely :—

“and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property.”

Omission of section 80, Act IV of 1882.

**40.** Section 80 of the said Act shall be omitted.

Substitution of new section for section 81, Act IV of 1882.

Marshalling securities.

**41.** For section 81 of the said Act the following section shall be substituted, namely :—

“81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.”

**42. In section 82 of the said Act,—**

Amendment of  
section 82, Act IV  
of 1882.

(1) For the first paragraph beginning with the words "Where several properties" and ending with the words "date of the mortgage," the following shall be substituted, namely:—

"Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date."

(2) In the third paragraph of the same section, for the word "second" the word "subsequent" shall be substituted.

Amendment of  
section 83, Act IV  
of 1882.

**43. In section 83 of the said Act,—**

(a) for the words "has become payable" the words "payable in respect of any mortgage has become due" shall be substituted;

(b) for the words "if then in his possession or power" the words "and all documents in his possession or power relating to the mortgaged property" shall be substituted;

(c) after the word "mortgage-deed," where it occurs for the second time, the words "and all such other documents" shall be inserted; and

(d) the following paragraph shall be added after the words "such other person as aforesaid," namely:—

"Where the mortgagee is in possession of the mortgaged property, the Court shall before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

Amendment of  
section 84, Act IV  
of 1882.

**44. In section 84 of the said Act,—**

(a) after the words "from the date of the tender, or" the words "in the case of a deposit, when no previous tender of such amount has been made" shall be inserted;

(b) for the words "as the case may be" the following shall be substituted, namely:—

"and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal"; and

(c) after the words "tender of the mortgage-money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be," shall be added.

Substitution of new section for section 91, Act IV of 1882.

Persons who may sue for redemption

45. For section 91 of the said Act the following section shall be substituted, namely :—

" 91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same ;
- (b) any surety for the payment of the mortgage-debt or any part thereof ; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

Insertion of new sections 92, 93 and 94 in Act IV of 1882.

Subrogation.

46. After section 91 of the said Act the following sections shall be inserted, namely :—

" 92. Any of the persons referred to in section 91 other than the mortgagor and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the right of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such person shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

Prohibition of tacking

93. No mortgagee paying off a prior mortgage whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Rights of mesne mortgagees.

94. Where property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Substitution of new section for section 95, Act IV of 1882  
Right of redeeming co-mortgagor to expenses.

47. For section 95 of the said Act the following section shall be substituted, namely :—

" 95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property".

Amendment of  
section 98, Act IV  
of 1882.

**48.** In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms," the words "an anomalous mortgage" shall be substituted.

Amendment of  
section 100, Act IV  
of 1882.

**49.** In section 100 of the said Act,—

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely :—

"and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for valuable consideration and without notice of the charge."

Substitution of new  
section for section  
101, Act IV of  
1882.

No merger in case  
of subsequent  
encumbrance.

**50.** For section 101 of the said Act the following section shall be substituted, namely :—

"101. Any mortgagee of, or person having a charge upon, immoveable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

Amendment of  
section 102, Act IV  
of 1882.

**51.** In section 102 of the said Act,—

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known" shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely :—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.";

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known" shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

Amendment of  
section 103,  
Act IV of 1882.

**52.** In section 103 of the said Act—

- (a) after the words "such notice may be served", the words "on or by" shall be inserted; and
- (b) the words beginning with "*ad litem*" and ending with "guardian appointed thereunder" shall be omitted.

Amendment of  
section 106,  
Act IV of 1882.

**53.** In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party".

Substitution of  
new section  
for section 107,  
Act IV of 1882.  
Leases how made.

**54.** For section 107 of the said Act the following section shall be substituted, namely:—

"107. A lease of immoveable property, except a lease from month to month, or for any term not exceeding one month, can be made only by a registered instrument, and such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the Local Government may, with the previous sanction of the Governor General in Council by notification in the local official Gazette, direct that leases of immoveable property of any description specified in the notification may be made by unregistered instrument or by oral agreement."

Amendment of  
section 108,  
Act IV of 1882.

**55.** In section 108 of the said Act,—

(a) in clause (h)—

- (i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and
- (ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(b) in clause (a) after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

Amendment of  
section 111, Act IV  
of 1882.

**56.** In clause (g) of section 111 of the said Act,—

- (a) the words "or the lease shall become void" shall be omitted;
- (b) after the words "title in himself" the following shall be inserted, namely:—  
"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";
- (c) for the words "either case" the words "any of these cases" shall be substituted; and
- (d) after the words "does some act" the words "other than the institution of legal proceedings to enforce forfeiture" shall be inserted.

Insertion of new section 114A in Act IV of 1882.

**57.** After section 114 of the said Act the following new section shall be inserted, namely :—

Relief against forfeiture in certain other cases

“ 114A. Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice—

(a) specifying the particular breach complained of ; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;

and the lessee fails, within thirty days from the date of the service of the notice to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.”

Substitution of new section for section 119, Act IV of 1882.

**58.** For section 119 of the said Act the following shall be substituted namely :—

Right of party deprived of things received in exchange.

“ 119. If any party to an exchange or any person claiming through such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party.”

Amendment of section 128, Act IV of 1882.

**59.** In section 128 of the said Act, after the words “ debts due by ” the words “ and liabilities of ” shall be inserted.

Amendment of section 129, Act IV of 1882.

**60.** In section 129 of the said Act, the words “ or, save as provided by section 123, any rule of Hindu or Buddhist law ” shall be omitted.

Amendment of section 130, Act IV of 1882.

**61.** In section 130 of the said Act,—

(a) after the words “ The transfer of an actionable claim ” the words “ whether with or without consideration ”, shall be inserted ; and

(b) the words “ and notwithstanding anything contained in section 123 ”, shall be omitted.

Saving clause.

**62.** Nothing in any of the following provisions of this Act, namely, sections 2, 3, 4, 5, 8, 9, 14, 16, 18, 19, 20, clause (c) of section 22, section 26, section 29, clause (b) of section 30, sections 31, 32, 33, 34, 45, 51, 54, 56, 57, 58, 60 and 61 shall be deemed in any way to affect —

(a) the terms or incidents of any transfer of property made or effected before the first day of January, 1929,



- 
- (b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,
  - (c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or
  - (d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of January, 1929, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

#### STATEMENT OF OBJECTS AND REASONS.

The Bill is sufficiently explained in the Report of the Special Committee printed below.

17th August, 1927.

W. T. M. WRIGHT.

[TO BE INTRODUCED IN THE LEGISLATIVE ASSEMBLY.]

**Appendix D.**

*A Bill to Supplement the Transfer of Property (Amendment) Act, 192 .*

WHEREAS by reason of the passing of the Transfer of Property (Amendment) Act, 192 , it is expedient that certain amendments should be made in the Married Women's Property Act, 1874, the Specific Relief Act, 1877, the Code of Civil Procedure, 1908, the Indian Registration Act, 1908, and the Indian Succession Act, 1925; It is hereby enacted as follows:—

of 192  
III of 1874.  
I of 1877.  
V of 1908.  
XVI of  
1908.  
XXXIX of  
1925.

Short title and  
commencement.

**1.** (1) This Act may be called the Transfer of Property (Amendment) Supplementary Act, 192 .

(2) It shall come into force on the first day of January, 1929.

Amendment of  
section 8, Act III  
of 1874.

**2.** For the proviso to section 8 of the Married Women's Property Act, 1874, the following proviso shall be substituted, namely:—

III of 1874.

“Provided that nothing herein contained shall—

(a) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(b) affect the liability of a husband for debts contracted by his wife's agency, expressed or implied.”

Insertion of new  
section 30A in Act  
I of 1877.

**3.** After section 30 of the Specific Relief Act, 1877, the following heading and section shall be inserted, namely:—

I of 1877.

“(k) *Part Performance.*”

Specific perfor-  
mance in case of  
part performance  
of contract to  
lease.

**30A.** Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if—

(a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(b) where specific performance is claimed by the lessee, he has in part performance of the contract taken possession of the property, or, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of January, 1929.”

Substitution of new rules for rules 2 to 8, Order XXXIV, Schedule I, Act V of 1908.

Preliminary decree in foreclosure suit.

4. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rules 2 to 8 the V of 1908, following rules shall be substituted, namely :—

"2. (1) In a suit for foreclosure if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

- (i) principal and interest on the mortgage,
- (ii) the costs of suit, if any, awarded to him, and
- (iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security together with interest thereon ; or

(b) declaring the amount so due at that date ; and

(c) directing—

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 40, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in  
foreclosure suit.

3. (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Preliminary decree  
in suit for sale.

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2 and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Power to decree  
sale in foreclosure  
suit.

(2) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(3) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, No. 10 or No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in  
suit for sale.

5. (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass a final decree under sub-rule (1) of this rule, unless the defendant in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) of rule 4 has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

Recovery of  
balance due on  
mortgage in suit  
for sale.

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him, may, if the balance is otherwise legally recoverable from the defendant personally, pass a decree for such amount.

Preliminary decree  
in redemption suit.

7. (1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing—

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the

plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than an usufructuary mortgage, a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Final decree in redemption suit.

8. (1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed, or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree—

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass a final decree under sub-rule (1) of this rule, unless the plaintiff in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is herein—



before referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

- (b) in the case of any other mortgage, not being an usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same."

Insertion of new rule 8A in Order XXXIV, Schedule I, Act V of 1908.

5. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, after rule 8 the following V of 1908. rule shall be inserted, namely :—

Recovery of balance due on mortgage in suit for redemption.

"8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is otherwise legally recoverable from the plaintiff personally, pass a decree for such amount."

Substitution of new rules for rules 10 and 11 of Order XXXIV, Schedule I, Act V of 1908.

6. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rules 10 and 11 the V of 1908 following rules shall be substituted, namely :—

Costs of mortgages subsequent to decree.

"10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless, in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

Payment of interest.

11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely :—

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(i) on the principal amount found or declared due on the mortgage,—at the rate fixed in the mortgage-deed or, if no rate has been so fixed, at such rate as the Court deems reasonable,

(ii) on the amount of the costs of the suit awarded to the mortgagee,—at such rate as the Court deems reasonable from the date of the preliminary decree, and

(iii) on the amount adjudged due to the mortgagee, for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate fixed in the mortgage-deed, or, if no rate has been so fixed, at nine per cent. per annum; and .

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10."

Substitution of new rule for rule 16, Order XXXIV, Schedule I, Act V of 1908.  
Charges.

7. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rule 15, the following rule shall be substituted, namely :—

"15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a charge within the meaning of section 100 of the Transfer of Property Act, 1882."

IV of 1882.

Substitution of new Forms for Forms 3 to 11 in Appendix D, Schedule I, Act V of 1908.

8. For Forms 3 to 11 in Appendix D to the First Schedule to the Code of Civil Procedure, 1908, the Forms set forth in Schedule I shall be substituted.

V of 1908.

Amendment of Act XVI of 1908.

9. (1) In sub-section (1) of section 17 of the Indian Registration Act, 1908,—

XVI of 1908.

(a) In clause (e), the word "and" shall be omitted and in clause (d), for the words "from year to year, or for any term exceeding one year or reserving a yearly rent" the words "except leases from month to month or for any term not exceeding one month; and" shall be substituted; and

(b) after clause (d) the following clause shall be added, namely :—

"(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ;"

(2) In clause (vi) of sub-section (2) of the same section, for the words "and any award" the words "except a decree or order expressed to be made on a compromise" shall be substituted.

(3) In section 48 of the same Act, after the words "or followed by delivery of possession" the following words shall be added, namely :—

"and the same constitutes a valid transfer under any law for the time being in force :

Provided that a mortgage by delivery of documents of title to immoveable property which is valid under section 59 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property."

IV of 1882.

(4) To section 49 of the same Act, the following proviso shall be added, namely :—

"Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, and as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882."

IV of 1882.

I of 1877.

IV of 1882.

Amendment of Act  
XXXIX of 1925.

10. (1) In section 115 of the Indian Succession Act, XXXIX of 1925,—

(a) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted;

(b) in *Illustration (i)* for the words "; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void" the following words shall be substituted, namely:—

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A."; and

(c) in *Illustration (ii)*, for the words "the mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely:—

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death".

(2) For section 116 of the same Act the following section shall be substituted, namely:—

Bequest to take  
effect on failure of  
prior bequest.

"116. Where by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void."

(3) For section 117 of the same Act and the *Illustrations* thereto, the following section shall be substituted, namely:—

Effect of direction  
for accumulation.

"117. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period and at the end of such period of eighteen years the property and income thereof shall be disposed of as if the period during which the accumulation has been directed to be made has elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly."

Saving.

**11. Nothing in this Act shall be deemed to affect—**

- (a) the terms or incidents of any transfer or disposition of property made or effected before the first day of January, 1929 ;
- (b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date ;
- (c) any right, title, obligation or liability already acquired, accrued or incurred before such date ;
- (d) any remedy or proceeding in respect of such right, title, obligation or liability ; or
- (e) anything done in the course of any proceeding pending in any Court on the aforesaid date ;

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

Repeal.

**12. The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.****SCHEDULE I.**

(See section 8.)

**FORM No. 3.***Preliminary decree for foreclosure.*

(Order XXXIV, rule 2.--Where accounts are directed to be taken.)

**(TITLE.)**

This suit coming on this day, etc. ; It is hereby ordered and decreed that it be referred to as  
the Commissioner to take the accounts following :—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable) ;
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received ;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no rate has been so fixed, at nine per cent. per annum) ;
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the                      day of                     , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the                      day of                     , or any later date up to which time for payment may be extended by the Court the said sum of Rs.                      and the sum of Rs.                      for the costs of the suit awarded to the plaintiff;

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, or Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

FORM No. 3A.

*Preliminary decree for foreclosure.*

(Order XXXIV, rule 2.—Where the Court declares the amount due.)

## (TITLE.)

This suit coming on this day, etc. : It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows :—

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property ; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.



## SCHEDULE.

*Description of the mortgaged property.*

## FORM No. 4.

*Final decree for foreclosure.*

(Order XXXIV, rule 3.)

## (TITLE.)

Upon reading the preliminary decree passed in this suit on the \_\_\_\_\_ day of \_\_\_\_\_ and further orders (if any) dated the \_\_\_\_\_ day of \_\_\_\_\_ of the plaintiff dated the \_\_\_\_\_ and the application day of \_\_\_\_\_ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage :

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned ;\* [and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

## FORM No. 5.

*Preliminary decree for sale.*

(Order XXXIV, rule 4.—Where accounts are directed to be taken.)

## (TITLE.)

This suit coming on this day, etc. ; It is hereby ordered and decreed that it be referred to \_\_\_\_\_ as the Commissioner to take the accounts following :—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no such rate has been so fixed at six per cent. per annum or at such rate as the Court deems reasonable) ;
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received ;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no such rate has been fixed, at nine per cent. per annum) ;

\* Words not required to be deleted.

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the                      day of                      and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the                      day of                      the said sum of Rs.                      and the sum of Rs.                      for the costs of the suit awarded to the plaintiff;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any

further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

#### FORM No. 5A.

*Preliminary decree for sale.*

(Order XXXIV, rule 4.—When the Court declares the amount due.)

#### (TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of \_\_\_\_\_ is the sum of Rs.

for principal, the sum of Rs.

for interest on the said principal, the sum of Rs.

for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security together with interest thereon, and the sum of Rs. \_\_\_\_\_ for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ the said sum of Rs. \_\_\_\_\_;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interests as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

##### *Description of the mortgaged property.*

#### FORM No. 6.

##### *Final decree for sale.*

(Order XXXIV, rule 5.)

#### (TITLE.)

Upon reading the preliminary decree passed in this suit on the \_\_\_\_\_ day of \_\_\_\_\_ and further orders (if any) dated the \_\_\_\_\_ day of \_\_\_\_\_ and the application of the plaintiff dated the \_\_\_\_\_ day of \_\_\_\_\_ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

## FORM No. 7.

*Preliminary decree for redemption where on default of payment by mortgagor an order for foreclosure is made.*

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

## (TITLE.)

This suit coming on this day, etc. ; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following :—

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable) ;
- (ii) an account of the income of mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received ;
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no rate has been so fixed at nine per cent. per annum) ;
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court the said sum of Rs. and the sum of Rs. for the costs of the suit awarded to the defendant ;
- (ii) that on such payment, and on payment thereafter before such date as the Court may fix of such

amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such direction as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

#### FORM NO. 7A.

*Preliminary decree for redemption where on default of payment by mortgagor an order for sale is made.*

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

#### (TITLE.)

This suit coming on this day, etc.: It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;



(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no rate has been so fixed, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the            day of           , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the            day of           , or any later date up to which time for payment may be extended by the Court the said sum of Rs.            and the sum of Rs.            for the costs of the suit awarded to the defendant;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the

defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that, the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and declared that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

#### FORM No. 7B.

*Preliminary decree for redemption where on default of payment by mortgagor an order for foreclosure is made.*

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

#### (TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant, in respect of the mortgage security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall

bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

##### *Description of the mortgaged property.*

#### FORM No. 7C.

*Preliminary decree for redemption where on default of payment by mortgagor an order for sale is made.*

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

#### (TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of                      is the sum of Rs.                      for principal, the sum of Rs.                      for interest on the said principal, the sum of Rs.                      for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs.                      for the costs of this suit awarded to the defendant, making in all the sum of Rs.                      .

2. And it is hereby ordered and decreed as follows :—

- (i) that the plaintiff do pay into Court on or before the                      day of                      or any later date up to which time the payment may be extended by the Court the said sum of Rs.                      ;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the

defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such direction as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

FORM No. 7D.

*Final decree for foreclosure in a redemption suit on default of payment by mortgagor.*

(Order XXXIV, rule 8.)

(TITLE.)

Upon reading the preliminary decree in this suit on the            day of            and further orders (if any) dated the            day of            , and the application of the defendant dated the            day of            for a final decree and after hearing the parties and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage :

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned\* [and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

FORM No. 7E.

*Final decree for sale in a redemption suit on default of payment by mortgagor.*

(Order XXXIV, rule 8.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the            day of           , and further orders (if any) dated the            day of           , and the application of the defendant dated the            day of           , for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which a Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

FORM No. 7F.

*Final decree in a suit for foreclosure, sale or redemption where the mortgagor pays the amount of the decree.*

(Order XXXIV, rules 3, 5 and 8.)

(TITLE.)

This suit coming on this day for further consideration and it appearing that on the            day of            the mortgagor or            the same being a person entitled

\* Words not required to be deleted.

to redeem has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of ; It is hereby ordered and decreed that—

(i) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor\* [or, as the case may be, who has redeemed the property] or an acknowledgment of the payment of the amount due in his favour;

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

2. And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of reconveyance or acknowledgment in the manner as aforesaid,—

(i) the said sum of Rs. be paid out of Court to the mortgagee;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor\* [or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor\* [or other person making the payment], the said deed of reconveyance or the acknowledgment in the office of the Sub-Registrar of ; and

(iii) \* [if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor\* [or such person as aforesaid who has made the payment].

#### FORM No. 8.

*Decree against mortgagor personally for balance after the sale of the mortgaged property.*

(Order XXXIV, rules 6 and 8A.)

#### (TITLE.)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of , and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs. ;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally :

It is hereby ordered and decreed as follows :—

that the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

\* Words not required to be deleted.



## FORM No. 9.

*Preliminary decree for foreclosure or sale.*

[Plaintiff.....1st Mortgagee

vs.

Defendant No. 1 ..... Mortgagor.

Defendant No. 2 ..... 2nd Mortgagee.]

(Order XXXIV, rules 2 and 4.)

## (TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 \* [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—].

3. And it is hereby ordered and decreed as follows :—

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints,

\* Words not required to be deleted.

and the plaintiff shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

- (i) \**[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property ; or
- (ii) \**[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold ; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property ; and
- (iii) \**[in the case where a sale is ordered under clause 4 (ii) above]* that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2 ; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same ; and
- (iv) that, if the money realized by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

\* Words not required to be deleted.

## 5. And it is hereby further ordered and decreed—

(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree *(in the same manner as the plaintiff might have done under clause 4 above)*—

\*[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property ;] or

\*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property ;]

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed\* *[in the case where a sale is ordered under clause 5 above]*—

(i) that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount ; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under his decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same ; and

(ii) that, if the money realized by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

\*Words not required to be deleted.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

#### FORM No. 10.

*Preliminary decree for redemption of prior mortgage and foreclosure or sale on subsequent mortgage.*

[Plaintiff.....2nd Mortgagee,

vs.

Defendant No. 1.....Mortgagor,

Defendant No. 2.....1st Mortgagee.]

(Order XXXIV, rules 2, 4 and 7.)

#### (TITLE.)

The suit coming on this                      day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this                      day of                      is the sum of Rs.                      for principal, the sum of Rs.                      for interest on the said principal, the sum of Rs.                      for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs.                      for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.                      .

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff\* [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—].

3. And it is hereby ordered and decreed as follows :—

(i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the                      day of                      or any later date up to which time for payment has been extended by the Court the said sum of Rs.                      due to defendant No. 2; and

(b) that defendant No. 1 do pay into Court on or before the                      day of                      or any later date up to which time for payment has been extended by the Court the said sum of Rs.                      due to the plaintiff; and

\* Words not required to be deleted.

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

(i) \**[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property ; or

(ii) \**[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold ; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property ; and

(iii) \**[in the case where a sale is ordered under clause 4 (ii) above]* that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in

\*Words not required to be deleted.

this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that if any balance be left, it shall be paid to defendant No. 1 or other person entitled to receive the same; and

- (iv) that, if the money realized by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

- (a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2, but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree *(in the same manner as the defendant No. 2 might have done under clause 4 above)*—

\*[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property;] or

\*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed *(in the case where a sale is ordered under clause 5 above)*—

- (i) that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that

\*Words not required to be deleted.



the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other person entitled to receive the same; and

- (ii) that, if the money realized by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

#### FORM No. 11.

*Preliminary decree for sale.*

[Plaintiff—Sub or derivative mortgagee,

vs.

Defendant No. 1.—Mortgagor.

Defendant No. 2.—Original mortgagee.]

(Order XXXIV, rule 4.)

#### (TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows :—

- (i) that defendant No. 1 do pay into Court on or before the said day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2.

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)

- (ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (i) and on

payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property ; and

- (iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 ; and that the balance, if any, shall then be paid to defendant No. 2 ; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage-deed or is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. (*as in sub-clause (ii) of clause 2*).

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold ; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2 and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder).

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

#### SCHEDULE.

*Description of the mortgaged property.*

#### SCHEDULE II.

(See section 12.)

#### ENACTMENTS REPEALED.

| 1<br>Year. | 2<br>No. | 3<br>Short title.  | 4<br>Extent of repeal. |
|------------|----------|--|------------------------|
|            |          | (a) <i>Act of the Governor-General in Council :</i>            |                        |
| 1916       | XV       | The Hindu Disposition of Property Act, 1916.                   | The whole.             |
|            |          | (b) <i>Act of the Indian Legislature :</i>                     |                        |
| 1921       | VIII     | The Hindu Transfers and Bequests (City of Madras) Act, 1921.   | The whole.             |
|            |          | (c) <i>Act of the Governor of Fort St. George in Council :</i> |                        |
| 1914       | I        | The Hindu Transfers and Bequests Act, 1914.                    | The whole.             |

#### STATEMENT OF OBJECTS AND REASONS.

The Bill is sufficiently explained in the Report of the Special Committee printed as an accompaniment to the Statement of Objects and Reasons of the Transfer of Property (Amendment) Bill.

The 17th August 1927.

W. T. M. WRIGHT.



# The Calcutta Gazette

THURSDAY, OCTOBER 6, 1927.

## PART VI.

**Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.**

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 24th August, 1927 :—

L. A. BILL NO. 39 OF 1927.

*A Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose.*

WHEREAS it is expedient further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for the purpose hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Criminal Law Amendment Act, 1927.

Insertion of new section 295A, in Act XLV of 1860.

Other actions intended to insult religion or outrage religious feelings of any class.

2. After section 295 of the Indian Penal Code the following section shall be inserted, namely :—

“295A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, intentionally insults or attempts to insult the religion, or intentionally outrages or attempts to outrage the religious feelings, of any class of His Majesty's subjects shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.”

XLV of 1860.  
V of 1898.

XLV of 1860.

Amendment of Act  
V of 1898.

3. In the Code of Criminal Procedure, 1898, the V of 1898.  
following amendments shall be made, namely:—

(i) in sub-section (1) of section 99A, after the words  
"His Majesty's subjects" the words "or which  
is intended to insult the religion or outrage the  
religious feelings of any such class" shall be  
inserted, and after the figures and letter  
"153A" the words, figures and letter "or  
section 295A" shall be inserted;

(ii) in section 196, after the word, figures and letter  
"section 294A" the words, figures and letter  
"or section 295A" shall be inserted:

(iii) in the Second Schedule, after the entry relating  
to section 295 of the Indian Penal Code, the  
following entry shall be inserted, namely:— XLV of  
1860.

|          |   |  |         |                    |                             |   |   |
|----------|---|--|---------|--------------------|-----------------------------|---|---|
| 295A ... | Insulting the religion<br>or outraging the<br>religious feelings of<br>any class. | Shall not<br>arrest<br>without<br>warrant. | Warrant | Not bail-<br>able. | Not com-<br>pound-<br>able. | Imprisonment of either<br>description for 3 years,<br>or fine, or both. | Presidency Magistrate<br>or Magistrate of the<br>first class; |
|----------|---|--|---------|--------------------|-----------------------------|---|---|

and

(iv) in the same Schedule, for the entries in the third  
fourth, fifth, sixth and eighth columns relating  
to section 296 of the Indian Penal Code, the  
following entries shall be substituted, respec- XLV of  
tively, namely:— 1860.

|                             |             |              |                        |   |
|-----------------------------|-------------|--------------|------------------------|---|
| "May arrest without warrant | Summons ... | Bailable ... | Not com-<br>poundable. | Presidency Magistrate or Magistrate of the first or<br>second class." |
|-----------------------------|-------------|--------------|------------------------|---|

#### STATEMENT OF OBJECTS AND REASONS.

The prevalence of malicious writings intended to insult the religion or outrage the religious feelings of various classes of His Majesty's subjects has made it necessary to examine the existing provisions of the law with a view to seeing whether they require to be strengthened. Chapter XV of the Indian Penal Code, which deals with offences relating to religion, provides no penalty in respect of writings of the kind described above. Such writings can usually be dealt with under section 153A of the Indian Penal Code as it is seldom that they do not represent an attempt to promote feelings of enmity or hatred between different classes. It must be recognized, however, that this is only an indirect way of dealing with acts which may properly be made punishable themselves, apart from the question whether they have the further effect of promoting feelings of enmity or hatred between classes. Accordingly it is proposed to insert a new section in Chapter XV of the Indian Penal Code, with the object of making it a specific offence intentionally to insult or attempt to insult the religion or outrage or attempt to outrage the religious feelings of any class of His Majesty's subjects. Certain amendments are also proposed in the Code of Criminal Procedure in pursuance of the object of the Bill.

The 22nd August, 1927.

J. CRERAR.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 18th August, 1927 :—

L. A. BILL NO. 36 OF 1927.

*A Bill further to amend the Indian Tariff Act, 1894.*

Whereas it is expedient further to amend the Indian Tariff Act, 1894, in order to remove or reduce the customs duties on certain machinery and materials of industries; it is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Indian Tariff (Amendment) Act, 1927.

(2) It shall come into force on the 1st day of October, 1927.

Amendment of the Second Schedule, Act VIII of 1894.

2. In the Second Schedule to the Indian Tariff Act, VIII of 1894, there shall be made the amendments specified in the Schedule to this Act.

## THE SCHEDULE.

(See section 2.)

1. In Item No. 1A, for the word and figures "No. 68" the words, letter and figures "Nos. 1B and 68" shall be substituted.

2. After Item No. 1A, the following item shall be inserted, namely :—

"1B | Sago flour."

3. After Item No. 6, the following heading and item shall be inserted, namely :—

## "TALLOW, STEARINE AND WAX.

6A | Tallow."

4. After item No. 8, the following item shall be inserted under the heading "MISCELLANEOUS," namely :—

"8A | China Clay."

5. After Item No. 13, the following item shall be inserted, namely :—

"13A | Bleaching paste and bleaching powder."

6. After Item No. 14, the following item shall be inserted, namely :—

"14A | Magnesium chloride."

and Item No. 14A shall be re-numbered 14B.

7. After Item No. 14B, the following heading and item shall be inserted, namely :—

## "DYES AND COLOURS.

14C | Dyes derived from coal-tar and coal-tar derivatives used in any dyeing process."



8. After Item No. 18, the following heading and items shall be inserted, namely :—

"MACHINERY.

18A MACHINERY, namely, such of the following articles as are not otherwise specified :—

- (1) prime-movers, boilers, locomotive engines and tenders for the same, portable engines (including power-driven road rollers, fire engines and tractors), and other machines in which the prime-mover is not separable from the operative parts ;
- (2) machines and sets of machines to be worked by electric, steam, water, fire or other power, not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts ;
- (3) apparatus and appliances, not to be operated by manual or animal labour, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose ;
- (4) control gear, self-acting or otherwise, and transmission-gear designed for use with any machinery above specified, including belting of all materials and driving chains, but excluding driving ropes not made of cotton ;
- (5) bare hard-drawn electrolytic copper wires and cables and other electrical wires and cables, insulated or not ; and poles, troughs, conduits and insulators designed as parts of a transmission system, and the fittings thereof.

*Note.*—The term ' industrial system ' used in sub-clause (3) means an installation designed to be employed directly in the performance of any process or series of processes necessary for the manufacture, production or extraction of any commodity.

18B The following TEXTILE MACHINERY AND APPARATUS by whatever power operated, namely, healds, heald cords and heald knitting needles ; reeds and shuttles ; warp and weft preparation machinery and looms ; bobbins and pins ; dobbies ; Jacquard machines ; Jacquard harness liner cards ; Jacquard cards ; punching plates for Jacquard cards ; warping mills ; multiple box sleys ; solid border sleys ; tape sleys ; swivel sleys ; tape looms ; wool carding machines ; wool spinning machines ; hosiery machinery ; coir mat shearing machines ; coir fibre willowing machines ; heald knitting machines ; dobby cards ; lattices and lags for dobbies ; wooden winders ; silk looms ; silk throwing and reeling machines ; cotton yarn reeling machines ; sizing machines ; doubling machines ; silk twisting machines ; cone winding machines ; piano card cutting machines ; harness building frames ; card lacing frames, drawing and denting hooks ; sewing thread balls making machines ; cumble finishing machinery ; hank boilers ; cotton carding and spinning machines ; mail eyes, linkoes, comber boards and comber board frames ; take-up motions ; temples and pickers ; picking bands ; picking sticks ; printing machines ; roller cloth ; clearer cloth ; sizing flannel ; and roller skins.

18C PRINTING AND LITHOGRAPHIC MATERIAL, namely : presses, type, aluminium lithographic plates, brass rules, composing sticks, chases, imposing tables, lithographic stones, stereo-blocks, wood blocks, half-tone blocks, electrotypes blocks, roller moulds, roller frames and stocks, roller composition, standing screw and hot presses, perforating machines, gold blocking presses, galley presses, proof presses, arming presses, copper plate printing presses, rolling presses, ruling machines, ruling pen making machines, lead and rule cutters, type casting machines, type setting and casting machines, rule bending machines, rule mitring machines, bronzing machines, leads, wooden and metal quoins, shooting sticks and galleys, stereotyping apparatus, metal furniture, paper folding machines, and paging machines, but excluding ink and paper.

18D | COMPONENT PARTS OF MACHINERY, as defined in Nos. 18A, 18B and 18C, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose :

Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable.

9. After item No. 24 the following items shall be inserted, namely :—

"24A | Ropes, cotton.

24B | Starch and farina."

10. After Item No. 43, under the heading "YARNS AND TEXTILE FABRICS", the following item shall be inserted, namely :—

|   |            |              |
|---|------------|--------------|
| "43A   Artificial silk yarn and warps, and artificial silk thread | Ad valorem | 7½ per cent. |
|---|------------|--------------|

11. In Part III of the Schedule, the heading "MACHINERY", and Items Nos. 51, 51A, 51B and 54 shall be omitted.

12. For the second proviso to Item No. 63, the following shall be substituted, namely :—

"Provided also that articles of machinery as defined in No. 18A or No. 18D shall not be deemed to be included hereunder".

13. In the proviso to Item No. 64, for the figures and letter "51" and "51A" the figures and letters "18A" and "18D" shall be substituted, respectively.

14. In Item No. 68, after the word "FLOUR", the words, "except sago flour" shall be inserted.

15. For Item No. 77, the following shall be substituted, namely :—

"77 | All sorts of stearine wax, grease and animal fat not otherwise specified."

16. In Item No. 92, after the word "sorts" where it occurs for the first time, the words "not otherwise specified" shall be inserted.

17. In Item No. 96, the brackets, words and figures "(see Nos. 15, 16, 18 and 51B)" shall be omitted.

18. In Item No. 103, for the figures "51" the figures and letter "18A" shall be substituted.

19. In Item No. 106, after the word "Fibre" the words "not otherwise specified" shall be inserted.

20. In Item No. 111, for the figures "51" the figures and letter "18A" shall be substituted.

21. Item No. 117 shall be omitted.

22. In Item No. 149A, the words, figures and letter "see Nos. 51 and 51A" shall be omitted.

23. In Item No. 153, for the figures and letter "51, 51A" the figures and letters "18A, 18D" shall be substituted.

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to the decision of the Government of India to remove the import duties on certain machinery and mill stores as announced in paragraph 12 of their Resolution No. 341-T. (27), dated the 7th June 1927, on the report of the Tariff Board (Cotton Textile Industry Enquiry).

2. It is considered undesirable to retain the 2½ per cent. *ad valorem* duty on printing machinery and material when the duty on other machinery is being removed. It is accordingly proposed to remove the duty on the articles included in Item 54 of the Import Tariff Schedule, as well as the duty on articles included in Items 51, 51-A and 51-B.

The 18th August, 1927.

G. RAINY.

W. T. M. WRIGHT,

Secretary to the Government of India (*offg.*).

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 18th August, 1927 :—

L. A. BILL NO. 37 OF 1927.

*A Bill further to amend the Indian Tariff Act, 1894, in order to safeguard the manufacture of cotton yarn in British India.*

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to safeguard the cotton textile industry in British India against competition in cotton yarn produced under industrial conditions which enable such yarn to be produced at a cost below that at which it can be produced in British India ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Tariff (Cotton Yarn Amendment) Act, 1927.

Amendment of  
of the Second  
Schedule to Act  
VIII of 1894.

2. (1) In Item No. 44 of the Second Schedule to the Indian Tariff Act, 1894, after the figure and words " 5 per cent. " the figure and words " or 1½ annas per pound, whichever is higher " shall be added.

(2) The amendment made by sub-section (1) shall have effect up to the 31st day of March, 1930.

## STATEMENT OF OBJECTS AND REASONS.

The Tariff Board which was appointed to inquire into the depression in the cotton textile industry reported that, owing to the double shift working rendered possible by the night work of women, the Japanese mills producing cotton yarn possessed an unfair advantage over the Indian mills, and that this advantage amounted to 10 per cent. of the selling price at the time the Report was submitted. This advantage is only partially neutralised by the existing 5 per cent. duty. In the opinion of the Board, the Japanese mills will retain their unfair advantage until June 30th, 1929, when the night work of women will be prohibited by law.

2. More than half the total imports of yarn are of counts from 31s to 40s and about 80 per cent. of the imports of these counts are from Japan. The Board found that the unfair advantage of a mill spinning an average of 20s was 10 pies per pound, if a reasonable return on capital was taken into account, and of a mill spinning an average of 32s 16·55 pies per pound. On the basis of these figures, a duty of one and-a-half annas a pound on counts from 31s to 40s and a duty of one anna a pound on lower counts would suffice to neutralise the unfair competition of the Japanese mills. The imports of counts of yarn below 31s are, however, less than 5 per cent. of the total imports, and for administrative reasons it is not considered advisable to vary the rate of duty according to the count. It is, therefore, proposed in the Bill that up to the 31st March, 1930, the 5 per cent. duty on cotton yarn should be subject to a specific minimum of one and-a-half annas a pound. The effect will be that duty will be leviable on all imported yarn at the rate of one and-a-half annas a pound, unless the value exceeds Rs. 1-14-0 a pound, when the duty will be levied at five per cent. *ad valorem*.

3. For protective purposes, a specific duty is preferable to an *ad valorem* duty, the amount of which varies with the price and is highest when protection is least needed and lowest when the industry most requires assistance. It is for this reason that the specific minimum duty of one and-a-half annas a pound has been proposed and not an increase in the *ad valorem* rate.

4. The night work of women in the Japanese mills will terminate, it is expected, on the 30th of June, 1929, but yarn produced under double shift conditions will still be on the market for some months afterwards. For this reason, it is proposed that the specific minimum duty should continue in force until the 31st March, 1930.

G. RAINY,

SIMLA, the 13th August, 1927.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



# The Calcutta Gazette

THURSDAY, OCTOBER 13, 1927.

## PART VI.

*Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.*

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[TO BE INTRODUCED IN THE COUNCIL OF STATE.]

*A Bill further to amend the Indian Limitation Act, 1908.*

WHEREAS it is expedient further to amend the Indian Limitation Act, 1908, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Indian Limitation (Amendment) Act, 1927.

(2) It shall come into force on the 1st day of January, 1929.

Amendment of section 10, Act IX of 1908.

2. In section 10 of the Indian Limitation Act, 1908 (IX of 1908) (hereinafter referred to as the said Act), the following paragraph shall be inserted, namely:—

“For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.”

Amendment of First  
Schedule to Act IX  
of 1908.

3. In the First Division of the First Schedule to the said Act,—

(a) after Article 48, the following Article shall be inserted, namely:—

|  |                         |  |
|--|-------------------------|--|
| <p>"48A. To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.</p> | <p>Three<br/>years.</p> | <p>When the sale becomes known to the plaintiff.</p> |
|--|-------------------------|--|

*Explanation.*—For the purposes of this article any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment is deemed to be property conveyed in trust, and the manager of any such property is deemed to be the trustee thereof.

(b) Article 133 shall be omitted; and

(c) in Article 134—

(i) after the entry in the first column, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this Article any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment is deemed to be property conveyed in trust, and the manager of any such property is deemed to be the trustee thereof";

(ii) for the entry in the third column the entry "When the transfer becomes known to the plaintiff" shall be substituted.

#### STATEMENT OF OBJECTS AND REASONS.

In paragraph 16 of Chapter 41 of their Report the Civil Justice Committee recommend—

(1) that articles 133 and 134 of the First Schedule to the Indian Limitation Act, 1908, should be revised with reference to recent decisions; and

(2) that in particular the alienation of property vested in the head of a religious institution should be specifically provided for.

2. It is understood that the first recommendation relates to the difficulties which have arisen with regard to the interpretation of articles 133 and 134 mainly as a result of the Full Bench ruling of the Madras High Court in *Seeti Kutti versus Kunhi Pattuma* (I. L. R., 40, Madras, 1040). In this case two of the Judges held that the words in column 3 must be given their literal meaning and that time must run from the date of transfer from the trustee or the original mortgagee and the date when possession was taken was immaterial; one Judge held that the article only applies when the transferee from the trustee or the original mortgagee took possession on the date of transfer; and the remaining two Judges held that time under the article only runs from the date when possession is obtained. The result was that the view of the first two Judges that the article operated to bar the particular suit by limitation failed. This case was considered by Richardson J. in *Naraindas versus Abdur Rahim* (I. L. R., 47, Calcutta, 866). Richardson J., held that limitation under the article begins to run from the date on which the property or the title was transferred by the trustee or the original mortgagee to the transferee. The other Judge, however, who decided that case, Shams-ul-Huda J., did not come to any final conclusion as to the effect of the article. In a later case reported in I. L. R., 50, Calcutta, page 62, Mookerjee J., said that the article referred to a case where the transfer by the trustee was accompanied by delivery of possession to the transferee, but it is not definitely clear that he intended to suggest that under the article possession must be taken on the date of transfer, and accordingly it is not certain which of the views held in the Madras Full Bench in the decision referred to above was favoured by him. These cases refer to article 134, and no cases dealing with article 133 have been traced, but the same general principle would presumably apply to both articles.



3. The Committee's second recommendation refers, it is understood, to the decisions of the Privy Council in *Vidyavaruthi versus Balusami* (I. L. R., 44, Madras, 831) and *Abdur Rahim versus Narain Das* (I. L. R., 50, Calcutta, 329). As a result of these two rulings it is now settled law that a *Dharmakarta*, *Mahant* or manager of a Hindu endowed religious property, or the *Mutwalli* or *Sajjadnashin* in whom the management of Muhammadan endowments is vested are not trustees within the meaning of the word as used in section 10 of the Indian Limitation Act for the reason that the property does not vest in them. The result is that when a suit is brought against a person, not being an assign for valuable consideration, endowments of this nature are not protected.

4. The Committee's two recommendations are therefore :—

- (1) that it should be made clear whether articles 133 and 134 mean what they say, viz., that limitation runs from the date of purchase or of transfer, as the case may be, and that the date of obtaining possession is immaterial ;
- (2) that section 10 of the Act should be amended so as to put Hindu and Muhammadan religious endowments on the same footing as other trust funds which definitely vest in a trustee.

After consulting the Local Governments the Government of India have come to the following conclusions :—

- (1) that in the case of both the articles the period of limitation should run from the date when the sale or transfer, respectively, becomes known to the plaintiff ;
- (2) that the period in the case of article 133 should be reduced from twelve to three years ;
- (3) that Hindu, Muhammadan and Buddhist religious as well as charitable endowments should be included within the scope of both these articles as also of section 10 of the Act.

The Bill gives effect to these conclusions.

The 26th July 1927.

S. R. DAS.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY.]

*A Bill further to amend the Indian Income-tax Act, 1922,  
for certain purposes.*

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for certain purposes hereinafter appearing; It is hereby enacted as follows :—

Short title and  
commencement.

1. (1) This Act may be called the Indian Income-tax (Second Amendment) Act, 1927.

(2) It shall come into force on the 1st day of April, 1928.

Amendment of  
section 2, Act XI of  
1922

2. In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act),—

(a) after clause (6) the following clause shall be inserted, namely :—

“(6A) ‘firm’, ‘partner’ and ‘partnership’ have the meanings assigned to them in the Indian Contract Act, 1872”; and

IX of 1872.

(b) for clause (14) the following shall be substituted, namely :—

“(14) ‘registered firm’ means a firm registered under the provisions of section 39A;”.

Amendment of  
section 23, Act XI  
of 1922.

3. In sub-section (4) of section 23 of the said Act, after the word “judgment” the words “and, in the case of a registered firm, may cancel the registration and assess it as if it were unregistered” shall be added.

Insertion of new  
section 23A in  
Act XI of 1922.

4. After section 23 of the said Act, the following section shall be inserted, namely :—

“23A. (1) Where any firm or other association of individuals formed for the purpose of carrying on any business, other than a Hindu undivided family or a company, is such that only one member thereof is competent to bind the firm or association by his acts, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that no assessment on the firm or association as such shall be made, and may thereupon include in the total income of each individual member thereof for the purpose of his assessment his share in the profits and gains of the firm or association.

(2) Where a company—

(a) restricts the right to transfer its shares, or

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty or less, or

(c) prohibits or makes no provision for any invitation to the public to subscribe for any share or debentures of the company,

and the Income-tax Officer is satisfied that the company is under the effective control of not more than five members, he may, with the previous approval of the Assistant Commissioner, pass an order that no assessment on the company as such shall be made, and may thereupon include in the total income of each individual member thereof for the purpose of his assessment his share in the profits and gains of the company.”

Power to assess  
individual members  
of certain firms,  
associations and  
companies.

Amendment of  
section 28, Act XI  
of 1922.

Penalty for  
concealment of  
income or improper  
distribution of  
profits.

5. For section 28 of the said Act, the following section shall be substituted, namely :—

"28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have not been distributed in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act, or with any declaration made under this Act as to the time of distribution of such profits, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2), unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer."

Amendment of  
section 30, Act XI  
of 1922.

6. In section 30 of the said Act,—

(a) in sub-section (1) after the words "Income-tax Officer", where they occur for the second time, the words "and any firm objecting to an order of an Income-tax Officer refusing registration under sub-section (3) of section 39A" shall be inserted; and

(b) in sub-section (2) after the words "under section 27", the words "or to register the firm under sub-section (3) of section 39A" shall be inserted.

Amendment of  
section 31, Act XI  
of 1922.

7. In sub-section (3) of section 31 of the said Act, between clause (c) and the proviso, the following words and clause shall be inserted, namely :—

"or, in the case of an order under sub-section (3) of section 39A,

(d) confirm such order, or cancel it and any proceedings in relation to the assessment of the firm which the Income-tax Officer may have taken subsequent thereto, and direct the Income-tax Officer to make a fresh assessment, and the Income-tax Officer shall thereupon proceed to make such fresh assessment."

Amendment of  
section 32, Act XI  
of 1922.

8. At the beginning of sub-section (1) of section 32 of the said Act, the words "Any firm, association or company objecting to an order passed by an Income-tax Officer under section 23A, and" shall be inserted.

Insertion of new  
section 39A in  
Act XI of 1922.  
Procedure in  
registration of  
firms.

9. After section 39 of the said Act, the following section shall be inserted, namely :—

"39A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times, and shall contain, in addition to a declaration as to the time of distribution of the profits of the firm, such other particulars and shall be in such form as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

(3) The Income-tax Officer may inquire into the incidents of the partnership, and may refuse to register any association of individuals which, in his opinion, is not a firm."

Amendment of  
section 54, Act XI  
of 1922.

10. In sub-section (2) of section 54 of the said Act, after the first proviso, the following proviso shall be inserted, namely :—

"Provided, further, that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 39A, or to the giving of evidence by a public officer in respect thereof."

Insertion of new  
section 66B in  
Act XI of 1922.  
Statement of case  
by Commissioner  
to High Court in  
cases arising under  
section 23A.

11. After section 66A of the said Act, the following section shall be inserted, namely :—

"66B. (1) Nothing in sub-section (2) or sub-section (3) of section 66 shall apply to an order under section 32 whereby the Commissioner decides an appeal against an order of an Income-tax Officer under section 23A.

(2) In such cases the firm, association or company may, by application accompanied by a fee of one hundred rupees, require the Commissioner to refer to the High Court any question of fact or law arising out of the order, and the Commissioner shall, within one month of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court, together with all documentary or oral evidence produced before him, and the High Court shall decide thereon all questions of fact and law raised thereby.

(3) The provisions of sub-sections (4), (5), (6), (7) and (8) of section 66 shall, as far as may be, apply to such references, and for this purpose the term "assessee" shall be deemed to include an applicant firm, association or company and the term "assessment" to include any assessment made on an individual consequent upon the original order of the Income-tax Officer.

(4) The provisions of section 66A shall apply to references to the High Court under this section:

Provided that nothing in this sub-section shall be deemed to authorise an appeal to His Majesty in Council on a question of fact."

## STATEMENT OF OBJECTS AND REASONS.

The Government have been considering for some time, in consultation with the commercial community and the officers of the Income-tax Department, the best methods of rendering illegal certain practices, now legal, which are adopted by persons desirous of evading the payment of income-tax and super-tax, and this Bill proposes to give the taxing authorities the necessary powers to check such evasion.

2. Broadly speaking, the proposals in the Bill are—

- (1) to define a 'firm', 'partner' and 'partnership' in the same sense as in the Indian Contract Act, 1872;
- (2) to give discretion to the Income-tax Officer to treat as separate assesses the individuals comprising any association carrying on business, of which only one member is competent to bind the association by his acts;
- (3) to give the Income-tax Officer discretion to treat the members of a company as separate assesses if the company restricts the right to transfer shares or limits the number of shareholders, exclusive of employees, to 50, or does not invite, or permit subscription to its shares or debentures by the public; and is under the control of not more than five members;
- (4) to permit the production by public servants before a Court of all documents or information relating to the registration of firms;
- (5) to impose penalties for failure actually to distribute shares of the profits of a firm in accordance with the provisions of the deed of partnership registered under the Income-tax Act; and
- (6) to give discretion to the Income-tax Officer to treat a registered firm as an unregistered firm if it fails to make a return of its income or to produce accounts or other documents called for by the Income-tax Officer.

3. The powers under (2) and (3) in paragraph 2 above will be exercised by the Income-tax Officer, with the previous approval of the Assistant Commissioner, and an appeal will lie against the orders of the Income-tax Officer to the Commissioner of Income-tax. Against the appellate order of the Commissioner, it is proposed to allow a reference to the High Court both on questions of fact and on questions of law instead of on questions of law only as in all other matters arising under the Income-tax Act.

*The 3rd August 1927.*

BASIL P. BLACKETT.



# The Calcutta Gazette

THURSDAY, OCTOBER 27, 1927.

## PART VI.

*Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.*

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of State on the 30th August, 1927 :—

#### COUNCIL OF STATE BILL NO. 7 OF 1927.

*A Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874.*

WHEREAS it is expedient further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, for the purposes hereinafter appearing: It is hereby enacted as follows :—

Short title

1. This Act may be called the Indian Succession (Amendment) Act, 1927.

Amendment of sections 223 and 236, Act XXXIX of 1925.

2. In sections 223 and 236 of the Indian Succession Act, 1925, the words "nor, unless the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, to a married woman without the previous consent of her husband" shall be omitted.

Insertion of new section 10 in Act III of 1874.

3. After section 9 of the Married Women's Property Act, 1874, the following heading and section shall be inserted, namely :—

"VI.— Husband's liability for wife's breach of trust or devastation.

Extent of husband's liability for wife's breach of trust or devastation.

10. Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased."



## STATEMENT OF OBJECTS AND REASONS.

As the result of a judgment in the Bombay High Court, that Court drew attention to the advisability of altering sections 183 and 189 of the Indian Succession Act, 1865, so as to make the consent of the husband unnecessary before the grant of probate or letters of administration to a married woman, and drew attention to the provisions of sections 8 and 13 of the Probate and Administration Act, 1881. In the Indian Succession Act, 1925, which is a consolidating Act, the provisions of sections 183 and 189 of the Indian Succession Act, 1865, and of sections 8 and 13 of the Probate and Administration Act, 1881, have been reproduced in sections 223 and 236.

Sections 183 and 189 of the Indian Succession Act, 1865, were based on the English law as it then existed. Since 1865, however, the law in England has considerably changed and the consent of a husband is no longer necessary. It is desirable to bring the Indian law into conformity with English law, and amendments of sections 223 and 236 of the Indian Succession Act with this object are accordingly proposed.

In English law there is a provision that a husband is not liable for any breach of trust, loss or misapplication committed by any woman as a trustee, executrix or administratrix, unless he has acted or intermeddled in the trust or administration. It is desirable that in this respect also Indian law shall be brought into line with English law, and a new section is therefore proposed to be added to the Married Women's Property Act, 1874.

S. R. DAS.

*The 21st July, 1927.*

W. T. M. WRIGHT,

*Secretary to the Government of India (offg.).*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of State on the 30th August, 1927 :—

## COUNCIL OF STATE BILL NO. 10 OF 1927.

*A Bill to enable bodies corporate to hold property in joint ownership.*

WHEREAS it is expedient to enable bodies corporate to hold property in joint ownership; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Bodies Corporate (Joint Ownership) Act, 1927.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Power for corporations to hold property as joint owners.

2. (1) A body corporate shall be capable of acquiring and holding any moveable or immoveable property in joint ownership in the same manner as if it were an individual; and where a body corporate and an individual, or two or more bodies corporate, become entitled to any such property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint ownership, they shall be entitled to the property as joint owners:

Provided that the acquisition and holding of property by a body corporate in joint ownership shall be subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

(2) Where a body corporate is joint owner of any property, then on its dissolution the property shall devolve on the other joint owner.

## STATEMENT OF OBJECTS AND REASONS.

Section 4 (1) (a) of the Indian Securities Act, 1920, lays down that when a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons. Though by virtue of section 3 (39) of the General Clauses Act, 1897, "persons" includes a company or association or body of individuals, whether incorporated or not, this definition has been held to be repugnant to section 4 (1) of the Indian Securities Act, as a corporation or association may be dissolved but cannot die and there can, therefore, be no survivorship as contemplated in the latter section. Thus the law as it stands precludes the possibility of a Government promissory note being held by a corporate body jointly with an individual or with another corporate body. The position as regards joint ownership of this nature was the same in England before the passing of the Bodies Corporate (Joint Tenancy) Act, 1899.

In accordance with the above view of the law, Government and the Public Debt Offices have been treating as invalid all endorsements on Government promissory notes in favour of a company jointly with an individual. The Public Debt Office, Bombay, has been addressed on more than one occasion by corporate bodies regarding the admissibility of joint ownership of Government securities on the lines recognised by the law in England, and the Controller of the Currency has recently reported that instances of such endorsements are coming to his notice and that he has been compelled to treat them as invalid. It is, therefore, necessary to undertake legislation to remove this technical difficulty. But as there is no reason why the principle of joint ownership should be confined to securities only, it is proposed to legislate generally on the lines of the Bodies Corporate (Joint Tenancy) Act, 1899.

S. R. DAS.

The 17th August, 1927.

W. T. M. WRIGHT,

Secretary to the Government of India (Offg.).

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of State on the 30th August, 1927 :—

## COUNCIL OF STATE BILL NO. 11 OF 1927.

*A Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes.*

WHEREAS it is expedient further to amend the Presidency-towns Insolvency Act, 1909, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Presidency-towns Insolvency (Amendment) Act, 1927.

Amendment of section 7, Act III of 1909.

2. To section 7 of the Presidency-towns Insolvency Act, 1909 (hereinafter referred to as the said Act), the following proviso shall be added, namely :—

“ Provided that, unless all the parties otherwise agree, the power hereby given shall, for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section.”

Amendment of section 15, Act III of 1909.

3. After sub-section (2) of section 15 of the said Act, the following sub-section shall be added, namely :—

“(3) On the making of the order admitting his petition, a debtor shall—

(a) unless the Court otherwise directs, produce all his books of account, and

(b) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed,

failing which the Court may dismiss his petition.”

Amendment of section 36, Act III of 1909.

4. In sub-sections (4) and (5) of section 36 of the said Act, for the words “ If, on the examination of any such person, the Court is satisfied,” the words “ If on his examination any such person admits ” shall be substituted.

Amendment of section 112, Act III of 1909.

5. After clause (k) of sub-section (2) of section 112 of the said Act, the following clause shall be inserted, namely :—

“(kk) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor.”

## STATEMENT OF OBJECTS AND REASONS.

Section 7 of the Presidency-towns Insolvency Act, 1909 (III of 1909), gives the Insolvency Court, subject to the provisions of the Act, full power "to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognisance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case".

Section 36 empowers the Court *inter alia* to summon before it any person "supposed to be indebted to the insolvent," and to require such person to produce before it any documents in his custody or power relating to the insolvent, his dealings or property. It on such examination of such person, the Court is satisfied that he is indebted to the insolvent, it may, on the application of the Official Assignee, order him to pay to the Official Assignee the amount in which he is indebted. This section taken alone does not empower a Court to enquire into and decide a claim which the alleged debtor does not admit.

2. The two sections are to some extent opposed to each other, and the practice of the Courts, as a result, is not uniform. The Calcutta High Court gives the greater weight to section 36 on matters coming within the scope of that section, and realises debts from debtors of the insolvent only when those debts are admitted. The Madras High Court, on the other hand, gives greater weight to section 7 and decides, as part of the insolvency proceedings, disputes between the Official Assignee and the alleged debtors of the insolvent. The Civil Justice Committee discussed the matter in paragraph 29 of Chapter XIV of their report (page 241).

3. It is considered expedient to amend the Act so as to secure uniformity of practice, and references to the various High Courts have shown that the Calcutta practice is generally preferred. Clauses 2 and 4 of the Bill secure that this practice shall be generally followed and are designed to remove the opposition between section 7 and section 36 by providing that the latter section shall prevail in matters falling within its scope. The amendments are so drafted that they will not prevent the Court from deciding a dispute between the parties concerned if they submit themselves to its jurisdiction.

4. The amendments to section 36 also help to make the position clear, and bring the wording of that section into line with section 25 of the English Bankruptcy Act of 1914.

5. Further, under section 112 of the Act, the Bombay and Rangoon High Courts have made rules under which every debtor who files a petition for adjudication as an insolvent is obliged to lodge forthwith in the office of the Official Assignee all books, papers, writings, accounts, and vouchers relating to his estate with a list thereof signed by himself, and also a statement of his moveable and immoveable estates. The Calcutta High Court has, as a matter of practice but without making any rules, similarly required such a petitioner, except when very special reasons to the contrary were shown to exist, to lodge his books of account, explain the position of his affairs to the Official Assignee, and furnish a list of the names and addresses of all debtors and creditors, before the passing of an adjudication order. This practice has been declared to be *ultra vires* in a judicial decision of that Court, and as the legality of the rules framed by the other High Courts in this matter might also be successfully challenged, it is proposed to amend sections 15 and 112 of the Act in the manner indicated in the Bill. Clauses 3 and 5 are intended to give effect to this proposal.

S. R. DAS.

The 17th August, 1927.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 18th August, 1927 :—

## E. A. BILL NO. 38 OF 1927.

*A Bill to amend the law relating to the fostering and development of the bamboo paper industry in British India.*

WHEREAS it is expedient to amend the law relating to the fostering and development of the bamboo paper industry in British India; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bamboo Paper Industry (Protection) Act, 1927.

Amendment of Act VIII of 1894.

2. (1) In the Second Schedule to the Indian Tariff Act, 1894, there shall be made the amendment specified in the Schedule to this Act. VIII of 1894.

(2) The amendments made by sub-section (1) shall have effect up to the 31st day of March, 1932.

Retrospective effect in certain cases.

3. Printing paper (excluding chrome, marble, flint, poster and stereo), containing no mechanical wood pulp, on which a duty has been paid at 15 per cent *ad valorem* under item No. 99 of Schedule II to the Indian Tariff Act, 1894, between the 21st of September, 1925, and the commencement of this Act shall be deemed to have been liable to pay duty at one anna per pound under item No. 155 of that Schedule; and any deficiency between the duty which has been paid on such paper and the duty hereby made payable shall be deemed to be duty short-levied within the meaning of section 39 of the Sea Customs Act, 1878, and that Act shall apply accordingly. VIII of 1894. VIII of 1878.

Amendment of Act XXV of 1925.

4. The second item of the Schedule to the Bamboo Paper Industry (Protection) Act, 1925, is hereby repealed. XXV of 1925.

## THE SCHEDULE.

## AMENDMENTS TO BE MADE IN SCHEDULE II TO THE INDIAN TARIFF ACT, 1894.

(See section 2.)

For Items Nos. 155 and 156, the following shall be substituted, namely :—

|     |   |        |   |
|-----|---|--------|---|
| 155 | PRINTING PAPER (excluding chrome, marble, flint, poster and stereo), all sorts which contain no mechanical wood pulp or in which the mechanical wood pulp amounts to less than 65 per cent. of the fibre content. | Pound. | One anna.   |
| 156 | WRITING PAPER—  |        |   |
|     | (a) Ruled or printed forms (including letter paper with printed headings) and account and manuscript books and the binding thereof.   | Pound. | One anna or 15 per cent. <i>ad valorem</i> , whichever is higher. |
|     | (b) All other sorts   | „      | One anna  |



## STATEMENT OF OBJECTS AND REASONS.

This Bill amends in three respects the Bamboo Paper Industry (Protection) Act, 1925, which added entries 155 and 156 in the Import Tariff Schedule (Schedule II to the Indian Tariff Act, 1894).

2. Firstly, by entry 155 a protective duty of one anna per pound was imposed on printing paper containing less than 65 per cent. of mechanical wood pulp, the intention being to exclude newsprint (which usually contains 65 per cent. or more of mechanical pulp) from the protective duty, and leave it under the revenue duty of 15 per cent. *ad valorem*. It has recently been held, however, that entry 155, as worded, excludes from the protective duty not only 'newsprint' as defined by the Tariff Board, but also paper containing no mechanical wood pulp at all. The effect is that the protective duty does not apply to a class of imported paper with which paper manufactured in India particularly competes, and to this extent the Act fails of its intended purpose.

This Bill, therefore, makes printing paper containing no mechanical wood pulp liable to the protective duty of one anna per pound, with retrospective effect from the 21st September, 1925, the date on which the Bamboo Paper Industry (Protection) Act became law.

The Bill also empowers the Governor-General in Council to recover the difference between the protective duty and the duty at 15 per cent. *ad valorem* in the case of all paper containing no mechanical wood pulp on which duty has been paid at 15 per cent. *ad valorem* only, and which was imported between the 21st September, 1925, and the date on which this Bill becomes law.

3. Secondly, for more than a year after the passing of the Act, the Customs authorities calculated the percentage of mechanical wood pulp mentioned in entry 155 on the fibre content of the paper; but in January, 1927, it was held that the entry, as worded, required that the percentage should be calculated on the *total weight* of the paper, including 'loading'. It was represented by importers that the effect of this interpretation was to bring within the scope of the protective duty large quantities of imported 'newsprint' which it was the intention of the Legislature to exclude, and the Tariff Board was, therefore, asked to report whether any, and if so what, changes were desirable in those entries in the Tariff Schedule which regulate the duty payable on newsprint.

The Board has recommended that entry 155 should be amended so as to make it clear that the percentage is to be calculated on the fibre content and not on the total weight. The effect will be to exclude from the operation of the protective duty certain classes of newsprint which were actually excluded up to January, 1927, but have since been included. This Bill gives effect to the Tariff Board's recommendation.

4. Thirdly, by entry 156 a protective duty of one anna per pound was imposed on writing paper, including ruled or printed forms and account and manuscript books and the binding thereof. It has been represented that this protective duty is in some cases substantially less than the former revenue duty of 15 per cent. *ad valorem*. Thus the Act is not only causing an unnecessary loss of revenue, but is also depriving the printing trade in India of the tariff assistance which it previously enjoyed. This Bill, therefore, amends entry 156 so as to make the duty one anna per pound or 15 per cent. *ad valorem*, whichever is higher.

G. RAINY.

The 5th August, 1927.

W. T. M. WRIGHT,

Secretary to the Government of India (offg.).



# The Calcutta Gazette

THURSDAY, NOVEMBER 17, 1927.

## PART VI.

***Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.***

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 19th September, 1927 :—

L. A. BILL NO. 44 OF 1927.

*A Bill further to amend the Inland Bonded Warehouses Act, 1896, for certain purposes.*

WHEREAS it is expedient further to amend the Inland Bonded Warehouses Act, 1896, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Inland Bonded Warehouses (Amendment) Act, 1927.

Amendment of section 4, Act VIII of 1896.

2. (1) In sub-section (1) of section 4 of the Inland Bonded Warehouses Act, 1896 (hereinafter referred to as VIII of 1896. the said Act),—

(a) the words "with the previous sanction of the Local Government" shall be omitted ; and

(b) the following proviso shall be added, namely :—

"Provided that, where a warehouse is to be wholly or partly in the charge of officers serving under a Local Government, it shall not be appointed or licensed as an inland bonded warehouse until the Local Government has signified its assent to such appointment or license."